

CALIFORNIA INTEGRATED INFORMATION NETWORK II

APPENDIX B, MODEL CONTRACT LANGUAGE

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* STD Form 65 is only provided as separate Adobe PDF file.

STANDARD AGREEMENT

STD 213 (Rev 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

DEPARTMENT OF GENERAL SERVICES, TELECOMMUNICATIONS DIVISION

CONTRACTOR'S NAME

2. The term of this Agreement is: December 3, 2005 through December 3, 2006. The State shall have the option to extend this agreement for two (2) additional one-year terms.
3. The maximum amount of this Agreement is: \$ _____
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement./

Attachment 1 – General Provisions	_____ page(s)
Attachment 2 – Statement of Work	_____ page(s)
Attachment 3 – Description of Services	_____ page(s)
Attachment 4 – Pricing	_____ page(s)
Attachment 5 – Ordering Documents	_____ page(s)
(including Exhibits A-1 through A-4, appended to Attachment 5)	
Attachment 6 – Acceptance Testing	_____ page(s)
Attachment 7 – Glossary	_____ page(s)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

DEPARTMENT OF GENERAL SERVICES, TELECOMMUNICATIONS DIVISION

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

601 Sequoia Pacific Boulevard, Sacramento, CA 95814

**California Department of General
Services Use Only**

☐ Exempt per:

CALIFORNIA INTEGRATED INFORMATION NETWORK II**GENERAL PROVISIONS**

These California Integrated Information Network II ("**CALNET II**") General Provisions are part of the Contract entered into effective as of the Effective Date by and between the State of California, through its Department of General Services, and _____, a _____ corporation having a principal place of business at _____.

1. PURPOSE OF CONTRACT

Contractor shall provide to the State, local agencies and governmental entities empowered to expend public funds, the CALNET II Services as defined and described in RFP DGS-2053 ("**RFP**"), the proposal submitted by Contractor in response to the RFP ("**Proposal**") and elsewhere in the Contract. The Services shall be available twenty-four hours a day, seven days a week, as further described in the RFP and the Proposal (each of which are incorporated herein by this reference). Capitalized terms not defined herein or in the Glossary (which is incorporated herein by this reference) shall be given the meaning, if any, ascribed to them in the RFP.

2. CONTACT INFORMATION

a. The Contract Representatives during the Term shall be:

State Agency: Department of General Services	Contractor:
Name: Tom Rainbolt	Name:
Phone: (916) 657-6169	Phone:
Fax: (916) 657-9129	Fax:

Direct all inquiries to:

State Agency: Department of General Services	Contractor:
Section/Unit: Telecommunications Division	Section/Unit:
Attention: Office of Network Services, Contract Management Section	Attention:
Address: 601 Sequoia Pacific Boulevard Sacramento, CA 95814	Address:
Phone: (916) 657-6169	Phone:
Fax: (916) 657-9129	Fax:

- b. Contractor shall act as the single point of contact and responsible party for all Services offered under this Contract. This includes all elements of service; ordering; provisioning; maintenance; and trouble reporting. Contractor will also act as the single point of contact in coordinating all entities required in the RFP and Proposal to meet the State's need for service. Contractor shall act as the single point of contact and responsible party for Services obtained from the ILECs or CLECs as resale Services in the out-of-franchise service areas offered to the State or any authorized user of this Contract as further described in the RFP.
- c. Whenever any notice or demand is to be given under this Contract to Contractor or the State, the notice shall be in writing and addressed to the applicable party at the address described in Section 2(a) above, or such subsequent address of a party provided to the other party via a written notice in accordance with this paragraph. Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt.
- d. State and local agencies and other governmental entities empowered to expend public funds may order Deliverables and Services under this Contract by issuing the appropriate order form described in Attachment 5 to this Contract, or such other form as may be approved by the State ("**Ordering Documents**").

3. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

4. SEVERABILITY

Contractor and the State agree that if any term or provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State. Contractor, not the State, has the right, power, authority and duty to supervise and direct the activities of the agents and employees of Contractor and to compensate such agents and employees for any work performed by them on the behalf of the State pursuant to this Contract. Contractor, and not the State, shall be responsible and therefore solely liable for all acts and omissions of the agents and employees of Contractor.

6. APPLICABLE LAW

This Contract and performance under it shall be governed by and interpreted in accordance with the applicable laws of the State of California, without giving effect to the principles thereof relating to conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Contract must be brought solely and exclusively in Sacramento, California, and each party irrevocably submits to the sole and exclusive jurisdiction of the courts in Sacramento County, Sacramento California, in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other party.

Contractor, in conducting its business as required by this Contract (including the RFP) and agreed to in the Proposal, shall comply with the Communications Act of 1934, as amended (including, but not limited to, the Telecommunications Act of 1996 and subsequent Acts), and as interpreted and applied by the applicable regulatory authorities and courts.

7. COMPLIANCE WITH STATUTES AND REGULATIONS

- a. Contractor represents, warrants and certifies that in the performance of this Contract, it will comply with all applicable laws, statutes, rules, regulations and orders of the United States and the State of California and agrees to defend, indemnify and hold the State harmless from and against all loss, cost, damage, liability and expense (including reasonable attorneys' fees and costs) arising by reason of Contractor's violation of this provision.
- b. In the event that any term or action required in this Contract or required in the RFP or agreed to in the Proposal requires a regulatory filing, Contractor shall make such filing and such action and/or term shall be made effective pursuant to the rules of the FCC and the CPUC. Contractor shall make the appropriate FCC filing within one day of execution of this Contract with the rates being effective at such time. Under the CPUC, terms are effective immediately upon signature by the parties; provided, however, that Contractor is obligated to and shall make a formal filing with the CPUC in a timely manner and shall provide the State with written notice that such filing has been made.
- c. In addition to the foregoing, Contractor shall, after execution of this Contract, make all necessary regulatory filings which shall include the rates and charges for Service and any terms and conditions that affect the rates and charges paid by any customer, as defined in the RFP.
- d. Should the filings described herein not adequately address an issue or fail to address an essential fact, Contractor's tariffs (or other published corporate pricing if Contractor is not required to file tariffs), if applicable, shall be utilized as a basis for providing continuity of Service, and Service offerings, pending further action by the State pursuant to the terms and conditions of this Contract, including but not limited to taking action under the Termination for Default provisions (Section 20) of this Contract.

8. CONTRACTOR'S POWER AND AUTHORITY

Contractor represents and warrants to the State that Contractor has full power and authority to grant the rights herein granted and that Contractor will defend, indemnify and hold the State harmless from and against any loss, cost, damage, liability, and expense (including reasonable attorneys' fees and costs), arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

The Services provided by Contractor shall be under the control, management, and supervision of Contractor. Contractor is fully responsible for all work performed under this Contract including subcontracted work. Contractor is wholly responsible for the performance of its employees, agents, subcontractors and suppliers in fulfilling its obligations described in this Contract.

9. ASSIGNMENT

This Contract shall not be assignable by Contractor in whole or in part without the prior written consent of the State. If the State elects to consent to such an assignment by Contractor, nonetheless, unless otherwise agreed by the parties, Contractor shall remain fully liable for and shall not be relieved from the full performance of all obligations under this Contract.

10. WAIVER OF RIGHTS

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity. A waiver by either of the parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the party waiving its rights.

11. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a. These General Provisions and any amendments thereto, including all of the attachments and Contract forms.
- b. The specifications and requirements contained in the RFP.
- c. The agreements to meet the specifications and requirements in the RFP stated in the Proposal.
- d. All other documents incorporated in the Contract by reference.

- e. All regulatory filings made pursuant to the terms and conditions of this Contract, the RFP or Proposal.

12. DELIVERY

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. If Contractor delivers in excess of the quantities or Services specified herein, the State shall not be required to make any payment for the excess Deliverables or Services, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.

13. SUBSTITUTIONS

Substitution of Deliverables and Services may not be tendered without advance written consent of the State. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the State.

14. INSPECTION, ACCEPTANCE AND REJECTION

Unless otherwise specified in the RFP:

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and Services under this Contract and will tender to the State only those Deliverables and Services that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for four years after final payment. Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices related to performance of the Contract.
- b. All Deliverables and Services may be subject to inspection and test by the State or its authorized representatives.
- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors, at no additional cost to the State, all information and data as may be reasonably required to perform their inspection.
- d. All Deliverables and Services may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e. The State shall give written notice of rejection of Deliverables delivered or Services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such Services. Such notice of rejection will state the respects in which the Deliverables or Services do not conform to their specifications and/or requirements. Acceptance shall not be construed to waive any warranty rights that the State might

- f. have at law or by express reservation in this Contract with respect to any nonconformity.

15. WARRANTY

- a. Unless otherwise specified in the RFP the warranties in this subsection a) begin upon acceptance of the Deliverable or Service in question and continue through the Term. Contractor warrants to the State that (i) Deliverables and Services furnished hereunder will conform in all material respects to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the RFP), and (ii) the Deliverables and Services furnished will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a detailed design document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables and Services furnished will provide all material functionality required thereby. The State's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- b. Contractor warrants that the Deliverables and Services furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any patent, copyright, trade mark, trade secret, or other proprietary right ("**Intellectual Property Right**") of a third party. Without limiting the generality of the foregoing, if harmful code is present in any Deliverable or Service, Contractor will use all commercially reasonable efforts, at no additional charge to the State, to eliminate and reduce the effects of such harmful code, including restoration of any lost data using generally accepted data restoration methods.
- c. Contractor warrants that the Services shall be performed, and all Deliverables and other materials prepared and delivered, in a timely, professional, efficient, diligent and workman-like manner, in accordance with the highest recognized professional standards and practices of quality and integrity in the industry, by qualified personnel fully familiar with the technology and methodologies used in performing the Deliverables and Services, and be fit for use as reasonably intended by the parties.
- d. Contractor represents and warrants that, as of the Effective Date: (i) there is no outstanding or anticipated civil or criminal litigation, arbitrated matter, or other dispute, in any forum, to which Contractor or any of its Affiliates is a party that, if decided unfavorably to Contractor or its Affiliates, would reasonably be expected to have a potential or actual material adverse effect on Contractor's ability to fulfill its obligations hereunder; and (ii) Contractor knows of no basis that might give rise to any such litigation, arbitration, or other dispute in the foreseeable future.
- e. Contractor represents and warrants all Equipment, networks, Software and other resources utilized or provided by Contractor in connection with the Deliverables and Services (collectively, the "**Provided Resources**") shall be successfully interfaced with, and shall be compatible with, the services, systems, items, and other resources of the State and its other third party service providers with which they will interoperate

(collectively, the “**State Resources**”), and (ii) none of the Deliverables, Services or other items provided to the State by Contractor shall be adversely affected by, or shall adversely affect, the State Resources or any Services provided by any such third party service providers, in any material respect, whether as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or otherwise.

- f. Contractor represents and warrants that: (i) it has had sufficient access to, and opportunity to inspect, all material components, workings, capabilities, procedures, and capacities of the State’s networks, equipment, hardware, and software associated with the provision of the Services and Deliverables and for full and complete analysis of the State’s requirements in connection therewith (as specified in this Contract); (ii) it has performed sufficient due diligence investigations regarding the scope and substance of the Services and the Deliverables; (iii) it has received sufficient answers to all questions that it has presented to the State regarding the scope and substance of the Services and the Deliverables; and (iv) it is capable in all respects of providing the Services and Deliverables in accordance with this Contract. Contractor hereby waives and releases any and all claims that it now has or hereafter may have against the State based upon any inaccuracy or incompleteness of the information it has received with regard to the scope and substance of the Services and the Deliverables. Further, Contractor covenants that it shall not seek any judicial rescission, cancellation, termination, reformation, or modification of this Contract or any provision hereof, nor any adjustment in the charges to be paid for the Deliverables or Services, based upon any such inaccuracy or incompleteness of information except where such information was willfully withheld or intentionally misrepresented by the State.
- g. Contractor represents and warrants that Contractor, at Contractor’s expense, shall (and shall cause all of its subcontractors to) maintain all Equipment, Systems, networks, and Software operated or used in performance of its obligations hereunder so that they operate in accordance with the service levels and their respective specifications, including: (i) maintaining such items in good operating condition, subject to normal wear and tear, (ii) performing repairs and preventative maintenance in a timely manner and in accordance with the manufacturer’s recommendations and requirements; and (iii) performing Software maintenance in accordance with the applicable Software supplier’s recommendations and requirements.
- h. All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and governmental users of the Deliverables or Services.
- i. Except as may be specifically provided in the RFP or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State shall be entitled to:
 - i. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or Service; or
 - ii. Should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or Service and payment to the State of

any additional amounts necessary to equal the State's Cost to Cover. The payment obligation in this subsection (i)(ii) will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability" (Section 23).

- j. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS CONTRACT, INCLUDING THE PROPOSAL AND ANY STATEMENT OF WORK, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, Contractor shall conform to any specific safety requirements contained in the Contract and as required by law or regulation or any State rules applicable to such premises. Contractor shall be responsible for the compliance of Equipment, Software, Systems and Services for which it is operationally responsible with such laws and shall be responsible for any acts or omissions of agents or employees of Contractor in contravention of such laws. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes, including receipt of prescribed training prior to entering certain State premises. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

17. INSURANCE

Contractor shall maintain all commercial general liability insurance, worker's compensation insurance and any other insurance that State deems appropriate under the Contract. All such insurance shall be procured with reputable insurance companies which are admitted sureties in the State of California. Each Contract year, Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially alter the insurance afforded under the policies unless notice of such cancellation, reduction or material alteration has been provided at least thirty (30) days in advance to the State. Upon request by the State, Contractor may be required to have the State shown as an "additional insured" on selected policies. The obligation of Contractor to provide the insurance specified herein shall not limit in any way any obligation or liability of Contractor provided elsewhere in this Contract. The rights of the State to insurance coverage under policies issued to or for its benefit are independent of this Contract and shall not be limited by this Contract.

18. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- a. If the Term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any Services supplied to the State under this Contract, and relieve the State of any further obligation therefore.

- b. STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

19. TERMINATION FOR THE CONVENIENCE OF THE STATE

- a. The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Deputy Director, DGS/PD, or designee, determines that a termination is in the State's interest. The Deputy Director, DGS/PD, or designee, shall terminate by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b. After receipt of a Notice of Termination, and except as directed by the State, Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. Contractor shall:
 - i. Stop work as specified in the Notice of Termination (except as required by any Disentanglement Services).
 - ii. Place no further subcontracts for materials, Services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - iii. Terminate all subcontracts to the extent they relate to the work terminated.
 - iv. Settle all outstanding liabilities and settlement proposals arising from the termination of subcontracts.
- c. Contractor and the State agree that the State shall have no obligation to pay any amount to Contractor upon the termination for convenience, other than, and in accordance with the terms of this Contract, the agreed price for Deliverables or Services accepted by the State and not previously paid for, adjusted for any savings on freight and other charges.

20. TERMINATION FOR DEFAULT

- a. The State may, subject to the clause titled "Force Majeure" (Section 21) and to subsection d) below, by written notice of default to Contractor, terminate this Contract in whole or in part if Contractor fails to:
 - i. Deliver the Deliverables or perform the Services within the time specified in the Contract or any amendment thereto;
 - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii. Perform in accordance with any of the other provisions of this Contract.

- b. The State's right to terminate this Contract under sub-section a) above, may be exercised if (i) the failure constitutes a material breach of this Contract and if Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the RFP calls for a shorter period; or (ii) there are repeated or numerous failures by Contractor which collectively constitute a material breach of this Contract. Without limiting the generality of the foregoing, Contractor hereby agrees that each of the following events shall be deemed a material breach by Contractor:
- i. Contractor's failure to comply with its obligations under Sections 36(a), 75, 76, 81(a) and/or 82;
 - ii. Submission of inaccurate reports or invoices that result in an adverse financial impact on the State;
 - iii. Any modifications or alterations to an Ordering Document by Contractor that were not authorized or approved by the State;
 - iv. Contractor's refusal to provide Services and Deliverables requested hereunder pursuant to a proper Ordering Document; and
 - v. Any efforts by Contractor, without the State's prior approval, to market to or otherwise solicit entities eligible to receive Deliverables and Services under this Contract to enter into a separate agreement for Deliverables and Services that are the same or substantially similar to the Deliverables and Services involving higher charges than the corresponding charges under this Contract or where such entity is mandated by the State to obtain Deliverables and Services pursuant to this Contract.
- c. If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire from an alternative provider, under terms and in the manner the State considers appropriate, Deliverables or Services similar to those terminated, and Contractor will be liable to the State for any excess costs for those Deliverables and Services, including without limitation costs third party vendors charge for such Deliverables and Services (but subject to the clause entitled "Limitation of Liability" (Section 23)). However, Contractor shall continue to provide all Deliverables and Services not expressly terminated by the State.
- d. If the Contract is terminated for default, the State shall be entitled to require Contractor to, and Contractor shall, transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the State, any:
- i. Completed Deliverables, and
 - ii. Partially completed Deliverables.

Upon direction of the State, Contractor shall also protect and preserve property in its possession in which the State has an interest.

- e. The State shall pay the agreed upon Contract price for completed Deliverables and Services delivered and accepted.
- f. If, after termination, it is determined by a final ruling in accordance with the dispute resolution process under this Contract that Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability" (Section 23).
- h. Except as may be permitted under the United States Bankruptcy Code or Section 36(a), Contractor may not, for any reason whatsoever, terminate this Contract or otherwise repudiate this Contract or refuse to perform its obligations hereunder.

21. FORCE MAJEURE

Except for defaults of subcontractors at any tier, Contractor shall not be liable for any default or delay in the performance of its obligations under this Contract if and to the extent such default or delay arises from fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of Contractor except to the extent that Contractor is at fault in failing to prevent or causing such default or delay, and provided that such default or delay can not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute involving agents or employees of Contractor shall not excuse Contractor from its obligations hereunder. In addition, the refusal of any agent or employee of Contractor to enter a facility that is the subject of a labor dispute shall excuse Contractor from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of harm. If the delay or failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control (as describe above) of both Contractor and subcontractor, and without the fault or negligence of either, Contractor shall not be liable for any default or delay in the performance of such obligations, unless the subcontracted Deliverables or Services were obtainable from other sources (including Contractor itself) in sufficient time for Contractor to meet the required delivery schedule.

In the event of such a force majeure event, Contractor shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and Contractor continues to use all commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. If Contractor is so prevented or delayed in its performance Contractor shall, as quickly as practicable under the circumstances, notify the State and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address it, and its expected duration.

If any such force majeure event has substantially prevented or delayed the delivery of or performance by Contractor of Deliverables or Services necessary for the performance of critical

State functions for longer than the recovery period specified in the applicable disaster recovery plan, Contractor shall, to the extent practicable and at Contractor's expense, procure such Deliverables or Services from an alternate source. In addition, if any such force majeure event substantially prevents or delays the delivery or performance by Contractor of such Deliverables or Services for more than seven (7) days, the State, at its option, may terminate the whole or any portion of this Contract so affected without payment of termination charges and, if terminated only in part, the charges payable hereunder shall be equitably adjusted to reflect those terminated Deliverables or Services. Contractor shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Contractor's ability to perform.

Upon the occurrence of a force majeure event that constitutes a disaster under the Disaster Recovery Plan, Contractor shall implement promptly, as appropriate, its Disaster Recovery and Security Plan and provide disaster recovery Services to the State. The occurrence of a force majeure event shall not relieve Contractor of its obligation to implement its Disaster Recovery and Security Plan and provide disaster recovery Services.

If Contractor fails to provide Services in accordance with this Contract due to the occurrence of a force majeure event, all amounts payable to Contractor hereunder shall be equitably adjusted in a manner such that the State is not required to pay any amounts for Services that it is not receiving.

Without limiting Contractor's obligations under this Contract, whenever a force majeure event or disaster causes Contractor to allocate limited resources between or among its customers, the State shall receive at least the same treatment as comparable Contractor customers.

22. RIGHTS AND REMEDIES OF STATE FOR DEFAULT

- a. In the event any Deliverables furnished or Services provided by Contractor in the performance of the Contract should fail to conform to the requirements herein, including the RFP, the State may reject the same, and it shall become the duty of Contractor to reclaim and remove the Deliverable promptly or to correct the performance of the Services, without expense to the State, and immediately replace or re-perform all such rejected Deliverables or Services, as applicable, with others conforming to the Contract.
- b. In addition to any other rights and remedies the State may have, the State may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of Contractor.
- c. In the event of the termination of this Contract, either in whole or in part, by reason of default or breach by Contractor, any loss or damage sustained by the State in procuring any items or Services which Contractor agreed to supply shall be borne and paid for by Contractor.

23. LIMITATION OF LIABILITY

- a. Contractor's liability for damages to the State for any cause whatsoever, and regardless

of the form of action, whether in contract or in tort, shall not be limited except as expressly set forth below.

- b. The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the total charges due and payable to Contractor hereunder and have not been paid to Contractor. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- c. In no event will either Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work; (ii) in connection with liability under the provision, entitled "Patent, Copyright, and Trade Secret Protection" (Section 32) or to any other liability (including without limitation indemnification obligations) for infringement of third party Intellectual Property Rights; (iii) in connection with claims covered by any specific provision herein calling for performance deficiency charges; (iv) in connection with claims arising under provisions herein calling for indemnification for third party claims against the State for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; (v) in connection with costs or attorneys' fees that the State becomes entitled to recover as a prevailing party in any action; (vi) in connection with breaches of Contractor's obligations of confidentiality; (vii) in connection with claims based upon a breach of Section 36(a) hereof or upon any repudiation of this Contract by Contractor or Contractor's refusal to perform its duties and obligations hereunder; (viii) for Cost to Cover damages; (ix) in connection with Contractor's failure to perform its obligations under Section 21 in the event of a force majeure event; or (x) in connection with Contractor's failure to comply with the terms of Section 30.

24. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- a. Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables or Services either at Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of Contractor.
- b. Contractor shall not be liable for damages solely arising out of or caused by an alteration or an Attachment not made or installed by Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by Contractor during the Contract.

25. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, Deliverables, Services, materials, or supplies in connection with the performance of this Contract. The following shall apply with respect to such claims:

- a. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

26. TIMELINESS

Time is of the essence in this Contract with respect to Contractor's performance and obligations.

27. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of Services; or (ii) receipt of an undisputed invoice, whichever is later.

28. CONTRACT MODIFICATION

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

Any change to the Contractor's name will require a Contract amendment. Upon notification and receipt of legal documentation indicting the name change, the State will process the required amendment, assuming no change has been made to the business entity.

29. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State (or which should be reasonably

understood to be confidential) and made available to Contractor in order to carry out this Contract, or which become available to Contractor in carrying out this Contract, shall be protected by Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State, but in no event less than reasonable care. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to Contractor. If the methods and procedures employed by Contractor for the protection of Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available other than through a breach of Contractor's or a third party's confidentiality obligations, is already rightfully in Contractor's possession without an obligation of confidentiality, is independently developed by Contractor outside the scope of this Contract and without reference to the State's confidential data or information, or is rightfully obtained from third parties without an obligation of confidentiality.

30. PUBLICITY

Contractor shall not use the name or mark or refer to the State or any department, division or agency thereof, directly or indirectly in any news releases, public announcements, or public disclosures pertaining to this Contract, including in any promotional or marketing materials, customer lists or business presentations, without the prior written approval of the Department of General Services or except as may be set forth in the RFP. Contractor and its representatives shall not make any statement to authorized users of the Services implying that a particular service is available to such authorized users under this Contract when such service has not been proposed or approved by the State for inclusion under this Contract.

31. PROTECTION OF CONTRACTOR FURNISHED PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished by Contractor hereunder are provided for State's exclusive use for the purpose of this Contract only. All such proprietary data shall remain the property of Contractor. State agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of Contractor, subject to the California Public Records Act.
- b. The State will ensure, prior to disposing of any Contractor furnished media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to Contractor furnished licensed Software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

32. PATENT, COPYRIGHT AND TRADE SECRET PROTECTION

- a. Contractor will indemnify, defend, and hold harmless the State, its officers, agents and employees, from any and all third party claims, losses, damages, liabilities, costs and expenses (including without limitation reasonable attorneys' fees and costs), and losses for infringement or violation of any Intellectual Property Right by any product, Deliverable or Service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from third party ("**Third Party Obligation**") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 32a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

The following shall apply with respect to such claims:

- i. The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time (but no delay or failure to so notify Contractor or tender the defense to Contractor shall relieve it of its obligations under this Contract except to the extent that Contractor has suffered actual prejudice by such delay or failure); and
- ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Should the Deliverables or Software, or the operation thereof, become, or in Contractor's opinion are likely to become, the subject of a claim infringement or violation of a Intellectual Property Right, Contractor shall, at its sole expense, either procure for the State the right to continue using the Deliverables or Software, or replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the State shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and assist the State in procuring substitute Deliverables or Software at Contractor's expense. If in the sole opinion of the State, the return of such infringing Deliverables or Software makes

the retention of other Deliverables of Software acquired from Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. Under circumstances where the State has a right of return, Contractor agrees to take back such Deliverables and Software and refund all sums the State has paid Contractor for such items.

- d. Contractor's obligations under this Section 32 shall not apply to the extent that the applicable claim of patent, copyright or trade secret infringement is based upon:
 - i. The combination or utilization of Deliverables furnished hereunder with equipment or devices not made or furnished by Contractor; or,
 - ii. The operation of Equipment furnished by Contractor under the control of any Operating Software other than, or in additional to, the current version of Contractor-supplied Operating Software; or
 - iii. The modification by the State of the Equipment furnished hereunder or of the Software; or
 - iv. The combination or utilization of Software furnished hereunder with non-Contractor supplied or approved Software.
- e. Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

33. EXAMINATION AND AUDIT

- a. Without limiting any examination or audit rights of the State set forth in the RFP, Contractor agrees that the State, at any tier or level (e.g., enterprise-wide, agency, etc.), or its designated representative, shall have the right, at any time and from time to time, to audit, review and copy any records and supporting documentation pertaining to performance of this Contract and to audit the practices and facilities used by Contractor to provide the Services and related operational matters. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment and five (5) years for e-rate funded projects, unless a longer period of records retention is stipulated or required by law. Contractor agrees to allow the auditor(s) access to such records and facilities during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. For avoidance of doubt, audits may include those conducted by personnel of the Department of General Services in performance of Contract oversight responsibilities in reviewing monthly fiscal management and/or other required reports. Costs for any audit of Contractor with respect to the accuracy, completeness or quality of Contract reports shall be borne by Contractor and any costs incurred by the State to otherwise validate Contract reports resulting from inaccurate report content or Contractor responsiveness shall be recovered from Contractor. If an audit reveals that Contractor has overcharged the State during the period to which the audit relates, then Contractor shall promptly refund such

overcharges to the State and, if the amount of the overcharge (offset by any undercharges revealed by such audit) is more than one percent (1%) of Contractor's charges to the State for such period, the reasonable cost of such audit (including any imputed costs of State for audits performed by the State itself) shall be borne by Contractor. If any audit reveals an inadequacy or insufficiency of Contractor's performance, including performance in connection with any security obligations of Contractor as set forth in this Contract, Contractor shall promptly develop and provide to the State, for approval, a reasonable and detailed corrective action plan and promptly thereafter implement such plan in accordance with its terms. In addition, the cost of such audit shall be borne by Contractor in the event that: (i) the State specifically identifies a particular deficiency with respect to Contractor's performance of any particular Service; (ii) Contractor either denies or fails to take prompt actions to investigate and cure such identified deficiency; (iii) an audit is initiated hereunder to investigate such deficiency; and (iv) the audit confirms the deficiency with respect to Contractor's performance of such Service. Further, Contractor agrees to include an equivalent right of the State to audit records and facilities and interview staff in any subcontract related to performance of this Contract.

- b. Notwithstanding anything to the contrary in Section 33(a) above, the State agrees that it will not exercise the audit rights described in Section 33(a) above for purposes of conducting an enterprise-wide audit of Contractor's performance under this Contract (i.e., Contractor's performance hereunder with respect to all issued Ordering Documents) more than two (2) times per calendar year.
- c. Contractor shall report to the State the results of any internal audit Contractor conducts of Contractor's performance under this Contract, where such audit shows any significant failures by Contractor to meet its obligations hereunder. If Contractor determines as a result of an internal audit that it has overcharged the State, then Contractor shall promptly pay to the State the amount of such overcharge plus interest from the date of Contractor's receipt of such overcharge at the rate of one and one-half percent (1.5%) per annum or the maximum amount permitted by law, whichever is less.
- d. Contractor agrees that (i) DGS or its delegate will have the right to obtain, copy and review all billing records of public entities purchasing under this Contract; and (ii) the State may forward audit results showing call rate discrepancies to the CPUC.

34. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

a. Applicability

Contractor agrees that subsequent to completion of the successful performance period and acceptance of the Services by the State, the availability and/or performance requirements and criteria established in the RFP SECTION 5 – Administrative Requirements and RFP SECTION 6 –Business and Technical Requirements will be met throughout the full Term, including any extensions. If the State determines, after at least six (6) months experience with the measurement method prescribed below, that the methods and procedures should be modified to more accurately identify gross System

deficiencies, an appropriate Contract amendment shall be executed to effect such modification.

b. Causes and Effects of Contractor Service Malfunctions

- i. The State recognizes that Equipment Failures do occur, and that Software is not infallible. Moreover, the State concedes that conditions external to Equipment may cause it to fail, particularly environmental conditions, that are outside the Equipment design operating parameters. The State agrees, therefore, that unsatisfactory Contractor Service performance which is outside the control of Contractor or Contractor Personnel will not be considered in a determination of the level of performance.
- ii. In the event Contractor's Service failure or unsatisfactory performance is a result of factors external to CALNET II, Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature. Within five (5) days after such failure occurs, Contractor shall prepare, for the State's review, comment and approval, a milestone-based action plan for making such recommendations and corrections.
- iii. In the event that the precise cause of the failure cannot be readily determined, both the State and Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified. Within five (5) days after such failure occurs, Contractor shall prepare, for the State's review, comment and approval, a milestone-based action plan for researching the probable cause of the failure.

c. Levels of Performance Required

Contractor shall perform the Deliverables and the Services at the levels of quality, completeness, accuracy, timeliness, responsiveness and efficiency that are equal to or higher than both the accepted industry standards applicable to the performance of such Deliverables and the Services by top tier service providers or, if higher, the levels of the same received by the State prior to the Effective Date. Without limiting the foregoing or other obligations of Contractor, Contractor shall provide all Deliverables and Services at levels at least in accordance with the service levels set forth in the Statement of Work.

d. Remedies for Unacceptable Levels of Performance

If a Contractor Deliverable or Service does not meet the minimum level of performance as set forth in the Statement of Work, the State shall promptly notify Contractor in writing of such unacceptable performance and Contractor shall promptly initiate action to remedy the unsatisfactory performance. Contractor shall, at its option, take one or more of the following actions to correct the situation:

- i. Provide on site Contractor personnel for analysis of the problem;

- ii. Replace the faulty Equipment, Deliverable or Service;
- iii. Provide substitute Equipment, Deliverable or Service satisfactory to the State;
- iv. Modify the Equipment, Deliverable or Service; or
- v. Take any other action with which the State concurs.

If Contractor fails to correct the situation to the satisfaction of the State during the thirty (30) calendar days following receipt of written notice from the State, the State and Contractor can mutually agree to extend the time beyond 30 days to a specified date. If Contractor fails to correct the situation to the satisfaction of the State by the end of the specified time period, then the State may (i) secure from the open market, at Contractor's expense, replacement Equipment, Deliverable or Service, and/or (ii) terminate that portion of the Contract relating to the deficient Equipment, Deliverable or Service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by Contractor and the State as being more appropriate.

e. Replacement or Substitution of Equipment by Contractor

If Contractor, in an attempt to improve the level of performance, replaces or substitutes Equipment that meets all of the Contract requirements, such replacement or substitution shall be at no cost to the State.

f. Review of Performance

Contractor's performance will be frequently evaluated in accordance with the service levels for each Service delivered throughout the term of this Contract. In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Administrative Manual, Section 1283.

35. DISPUTES

- a. The parties' shall deal in good faith and attempt to resolve potential disputes informally. All disputes shall immediately be brought to the attention of the parties' respective project managers. If the dispute persists, and the project managers are not able to agree on a resolution to any particular issue, within ten (10) days after the dispute initially became known to each party, then Contractor shall submit the dispute to an executive committee consisting of the State's project manager and representatives of DGS/TD's executive management, a representative of DGS/PD, and Contractor's project manager and designated senior representatives of Contractor for resolution. This executive committee will convene in person or by telephone within three (3) business days after the dispute is submitted to the executive committee. If the dispute persists and the executive committee is not able to agree on a resolution to any particular issue within ten (10) days after the dispute initially became known to the executive committee, then Contractor shall submit to the Deputy Director, DGS/PD, or designee a written demand for a final decision regarding the disposition of any dispute between the parties

arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. If Contractor is not satisfied with the decision of the Deputy Director, DGS/PD, or designee, Contractor may appeal the decision to the Department Director.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of Services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.
- c. Any final decision of the State shall be expressly identified as such in writing, and shall be signed by the Deputy Director, DGS/PD, or designee or the Department Director, if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

36. STOP WORK

- a. Notwithstanding anything to the contrary contained herein, and even if any dispute arises between the parties and regardless of whether or not it requires at any time the use of the dispute resolution procedures described above, in no event nor for any reason shall Contractor interrupt the provision of Services to the State or any obligations related to Disentanglement under Section 75, disable any Equipment or Software used to provide Services, or perform any other action that prevents, impedes, or reduces in any way the provision of Services or the State's ability to conduct its activities (other than minimal, routine interruptions necessary in order for Contractor to provide the Services), unless: (i) authority to do so is granted by the State or conferred by a court of competent jurisdiction; or (ii) the Term of this Contract has been terminated or has expired pursuant to Section 19 or 20 and a Disentanglement has occurred in accordance with Section 75.
- b. Without limiting the generality of Section 36(a), above, the State may, at any time, by written Stop Work Order to Contractor, require Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to Contractor,

or within any extension of that period to which the parties shall have agreed, the State shall either:

- i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- c. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- d. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- e. The State shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this clause.

37. FOLLOW-ON CONTRACTS

- a. If Contractor or its Affiliates provides Technical Consulting and Direction (as defined below), Contractor and its Affiliates:
- i. Will not be awarded a subsequent Contract to supply the Service or System, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - ii. Will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b. **"Technical Consulting and Direction"** means Services for which Contractor received compensation from the State and includes:

- i. Development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - ii. Development or design or test requirements;
 - iii. Evaluation of test data;
 - iv. Direction of or evaluation of another Contractor;
 - v. Provision of formal recommendations regarding the acquisition of Information Technology products or Services; or
 - vi. Provisions of formal recommendations regarding any of the above.
- c. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("**Conflict Laws**"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

38. PRIORITY HIRING CONSIDERATIONS

If this Contract includes Services in excess of \$200,000, Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

39. COVENANT AGAINST GRATUITIES

Contractor represents and warrants to the State that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this representation and warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

40. NONDISCRIMINATION CLAUSE

- a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act

(Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

41. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

42. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code section 4552, 4553, and 4554, the following provisions are incorporated herein:

- a. In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, or Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material and other items, or Services by the supplier of sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b. If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - i. The assignee has not been injured thereby, or
 - ii. The assignee declines to file a court action for the cause of action.

43. DRUG-FREE WORKPLACE CERTIFICATION

Contractor certifies under penalty of perjury under the laws of the State of California that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The person's or organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and,
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

44. FOUR-DIGIT DATE COMPLIANCE

Contractor represents and warrants to the State that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or Services to the State. **"Four Digit Date Compliant"** Deliverables and Services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality or warranty obligations set forth elsewhere herein.

45. SWEATFREE CODE OF CONDUCT

- a. Contractor declares under penalty of perjury that no Equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal

sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov> and Public Contract Code Section 6108.

- b. Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

46. RECYCLING

Contractor hereby certified under penalty of perjury that a percentage (0% to 100%) of the materials, Goods, supplies offered, or products used in the performance of this Contract meet or exceed the minimum percentage of recycled material as defined in PCC Sections 12161 and 12200.

47. CHILD SUPPORT COMPLIANCE ACT

For any Contract in excess of \$100,000, Contractor acknowledges in accordance with PCC Section 7110, that:

- a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

48. AMERICANS WITH DISABILITIES ACT

Contractor represents and warrants to the State that Contractor currently complies and at all times during the Term of this Contract will comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

49. UNION ACTIVITIES

Contractor acknowledges that by signing this Contract, Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Contract and agrees to the following:

- a. Contractor will not assist, promote or deter union organizing by employees performing work on a State service contract, including a public works contract.
- b. No State funds received under this Contract will be used to assist, promote or deter

union organizing.

- c. Contractor will not, for any business conducted under this agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State property is equally available to the general public for holding meetings.
- d. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

50. PERFORMANCE DEFICIENCY CHARGES

a. General

In the event that Contractor fails to deliver a Deliverable or render the Services in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. The State and Contractor, therefore, agree that, in addition to the other rights of the State hereunder, the State, in its sole discretion, may invoice Contractor for performance deficiency charges to reflect (i) any and all amounts paid hereunder that the State believes in good faith are not owed to Contractor due to Contractor's failure to perform its obligations under this Contract (including, the obligations set forth in the Statement of Work and performance of administrative, reporting, and relationship management functions) or due to the deficiency, delay, lack of professionalism, incompleteness, or other sub-standard nature of such performance; and (ii) any and all amounts, actual or imputed, incurred hereunder as a result of Contractor's failure to so perform or the sub-standard nature of such performance. Within ten (10) days of receipt of an invoice for performance deficiency charges or such other notice from the State of an intent to invoice Contractor for performance deficiency charges, Contractor shall meet with the State to confer regarding the performance deficiency charges, the underlying failures or deficiencies in Contractor's performance, and alternative remedies and/or cures, if any, with respect to such failures or deficiencies. Unless the State and Contractor agree otherwise in writing as a result of such meeting, Contractor shall pay to the State or its designee all performance deficiency charges within thirty (30) days of receipt of an invoice therefor. Such performance deficiency charges shall constitute agreed fee reductions and not penalties or liquidated damages hereunder. Without limiting any of the foregoing, the parties presently anticipate that: (i) DGS/TD shall issue any invoices for performance deficiency charges and facilitate the meetings described in this Section, and (ii) Contractor shall pay any performance deficiency charges to the entity identified by the State as the beneficiary of the Deliverables and Services to which the performance deficiency charges relate.

- b. Contractor shall provide all assistance and support reasonably necessary for the administration of such performance deficiency charges, including, the provision of additional documentation regarding Contractor's performance hereunder and the payment or credit of the performance deficiency charges as directed by the State.

- c. Contractor may not earn back, with subsequent performance or otherwise, the amounts of any performance deficiency charges that become due the State.

51. SET-OFF RIGHTS

Notwithstanding anything to the contrary in this Contract, and in addition to the other rights of the State hereunder with respect to disputing invoices or withholding amounts, the State, in its sole discretion, may set off against any and all amounts otherwise payable to Contractor pursuant to any of the provisions of this Contract: (i) any and all amounts claimed by the State in good faith to be owed by Contractor to the State pursuant to any of the provisions of this Contract; (ii) any and all amounts that the State believes in good faith that it does not owe to Contractor due to Contractor's failure to perform its obligations under this Contract (including, performance of administrative, reporting, and relationship management functions) or due to the deficiency, delay, lack of professionalism, incompleteness, or other sub-standard nature of such performance; and (iii) any and all amounts claimed by the State in good faith to be owed by Contractor pursuant to any other written agreement between the Parties. Within twenty (20) days after any such set-off by the State, the State shall provide Contractor with a written accounting of such set-off and a written statement of the reasons therefor. For purposes of clarification of subpart (iii) above, unless otherwise determined by DGS/TD, amounts claimed by the State in good faith to be owed by Contractor pursuant to a particular Ordering Document for one entity eligible to receive Deliverables and Services hereunder shall be set off only against amounts otherwise payable to Contractor under such Ordering Document of another Ordering Document of such entity.

52. CONTRACTOR PERSONNEL

- a. When Contractor needs access to State's premises to perform the required Services under this Contract, Contractor personnel shall perform their duties during State's regular work days and normal work hours, except as may be specifically agreed to otherwise by the State.
- b. The State reserves the right to disapprove the continuing assignment of Contractor personnel working on State premises. If the State exercises this right, and Contractor cannot immediately replace the disapproved personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected hereby.
- c. Contractor will make every effort consistent with sound business practices to honor the specific request of the State with regard to assignment of its employees; however, subject to the above paragraph and the paragraph below, Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond Contractor's control, Contractor will make every reasonable effort to provide suitable substitute personnel.
- d. Contractor represents that the individuals designated as Key Personnel in the RFP or any Statement of Work are, and promises that any subsequent Key Personnel shall be, experienced professionals, possessing the appropriate knowledge, skills, and expertise to perform properly their assigned duties. With regard to each of the Key Personnel, including replacements for the Key Personnel, Contractor shall not, without obtaining the

State's prior written consent at least thirty (30) days in advance, at any time during the first eighteen (18) months (or such other time periods as may be specified in the RFP or any Statement of Work) after the date that such individual commences performing Services as one of the Key Personnel hereunder: (i) replace or reassign such individual, if doing so would require the alteration or reduction of such individual's contribution to, or involvement with, the Services; or (ii) terminate the employment of such individual, except with regard to termination for "good cause" (which term, as used in this Contract, means cause for termination as determined in accordance with Contractor's employment policies, consistently applied). Contractor shall not be required to obtain the State's consent to any such replacement or reassignment if the function being performed by the individual being replaced or reassigned is eliminated from the Services. If any of the Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Contractor, and therefore becomes unable to perform the functions or responsibilities assigned to such person, Contractor shall promptly replace such person with another person at least as well qualified to perform such functions and responsibilities as the person being replaced, and the State shall have the right to interview and approve each such replacement. The parties acknowledge that qualifications include a mix of experience and education and that equally-qualified individuals may have different mixes thereof. Contractor shall cause its subcontractors to comply with this provision with respect to any of individuals of such subcontractors that are designated as Key Personnel.

- e. In recognition of the fact that Contractor personnel providing Deliverables or Services under this Contract may perform similar services from time to time for others, subject to the above paragraph, this Contract shall not prevent Contractor from performing such similar services or restrict Contractor from using the personnel provided to the State under this Contract, providing that such use does not conflict with the performance of Services under this Contract.
- f. Contractor shall submit annually a business plan that demonstrates a commitment to providing qualified staff and resources to support authorized user, business activities and Contract management.

53. RESPONSIBILITIES OF THE STATE

- a. The State shall cooperate with Contractor by, among other things, making available, as reasonably requested by Contractor, information, approvals, acceptances and management decisions so that Contractor may accomplish its obligations and responsibilities hereunder.
- b. The State is responsible for providing required information, data, Documentation, and test data to facilitate Contractor's performance of the work, and will provide such additional reasonable assistance as is specifically set forth in the Statement of Work.
- c. Unless otherwise agreed in writing by the parties, the State shall not have any operational responsibilities other than those set forth in this Section 53.
- d. Contractor's failure to perform its responsibilities under this Contract, shall be excused if

and to the extent that it is caused directly by the State's material breach of its material responsibilities set forth in this Section 53, but only if (i) Contractor immediately notifies the State of such material breach and its inability to perform under such circumstances, (ii) Contractor provides the State with every reasonable opportunity to correct such material breach and thereby avoid such Contractor non-performance, and (iii) Contractor uses commercially reasonable efforts to perform notwithstanding the State's material breach. Contractor's performance shall only be excused under this Section for an amount of time equal to the duration of the State's delay in meeting its applicable obligation. In the event of any claim for equitable adjustment to schedule, the parties will negotiate in good faith regarding execution of a Contract amendment.

54. UNANTICIPATED TASKS

- a. Any of the following shall be deemed part of the Services and Contractor shall provide them as part of the Services without additional charge: (i) services, functions or responsibilities not specifically described in this Contract that are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Contract; and (ii) telecommunication services or functions being received or performed by the State in the twelve (12) months prior to the Effective Date. In the event that any other work must be performed which was wholly unanticipated and is not specified in the Statement of Work, but which in the opinion of both parties is necessary to the successful accomplishment of the general scope of work outlined, the procedures outlined in this Section will be employed.
- b. For each item of unanticipated work not specified in the Statement of Work, a Work Authorization will be prepared.
- c. It is understood and agreed by both parties to this Contract that all of the terms and conditions of this Contract shall remain in force with the inclusion of any such Work Authorization. Such Work Authorization shall in no way constitute a Contract other than as provided pursuant to this Contract not in any way amend or supersede any of the other provisions of this Contract.
- d. Each Work Authorization shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by Contractor, the job classification or approximate skill level of the personnel to be made available by Contractor, an identification of all significant material to be developed by Contractor and delivered to the State, an identification of all significant materials to be delivered by the State to Contractor, an estimated time schedule for the provisions of these Services by Contractor, completion criteria for the work to be performed, the name or identification of Contractor personnel to be assigned, Contractor's estimated work hours required to accomplish the purpose, objective or goals, Contractor's billing rates per work hour, and Contractor's estimated total cost of the Work Authorization.
- e. All Work Authorizations must be in writing prior to beginning work and signed by Contractor and the State. (See Attachment 5, Exhibit A-4 Work Authorization Form.)
- f. The State has the right to require Contractor to stop or suspend work on any Work

Authorization pursuant to the "Stop Work" provision (Section 36) of this Contract.

- g. Personnel resources will not be expended (at a cost to the State) on task accomplishment in excess of estimated work hours required unless the procedure below is followed:
 - i. If, in the performance of the work, Contractor determines that a Work Authorization to be performed under this Contract cannot be accomplished within the estimated work hours, Contractor will immediately notify the State in writing of Contractor's estimate of the work hours which will be required to complete the Work Authorization in full. Upon receipt of such notification, the State may:
 - ii. authorize Contractor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the Work Authorization (such an authorization not unreasonably to be withheld), or
 - iii. terminate the Work Authorization, or
 - iv. alter the scope of the Work Authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

The State will notify Contractor in writing of its election within seven (7) calendar days after receipt of Contractor's notification. If notice of the election is given to proceed, Contractor may expend the estimated additional work hours or Services. The State agrees to reimburse Contractor for such additional work hours.

55. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

- a. Contractor shall make every reasonable effort to assist the State in procuring use of Contractor Services compatible with that provided under this Contract to meet emergencies.
- b. The State, at its option, may accept or reject the use of emergency Equipment.

56. NON-EXCLUSIVE AGREEMENT

Nothing in this Contract shall be construed as a requirements contract or interpreted as preventing the State from obtaining any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or providing the same to itself. Nor shall anything in this Contract be construed or interpreted as limiting the State's right or ability during the Term of this Contract to increase or decrease its demand for Services hereunder. To the extent the State obtains from third parties, or provides to itself, replacement services for any of the Services hereunder, the amount to be paid to Contractor by the State for the remaining Services will be equitably adjusted downward, to the extent necessary, to reflect the portion of the Services that Contractor will not be providing or performing, regardless of whether such Services were priced individually or as a bundle with any of the remaining Services.

57. CHARGES

Contractor agrees that the State and any authorized users are not subject to any minimum monthly usage charges for any Services contracted under this Contract.

- a. Contractor agrees that services not identified in this Contract may not be provided nor charged to the State or authorized users of this Contract.
- b. Contractor agrees that charges not identified in this Contract may not be assessed to the State or authorized users of this Contract.
- c. Invoices for all contracted Services shall not be subject to late payment charges prior to the Contract defined due date.
- d. Contractor agrees that the charges shall comply with Section 69 below.

58. SERVICE COSTS

Contractor shall provide a complete list of all Service and product descriptions offered under this Contract and correlate the Services to the associated costs in applicable attachment of this Contract. Cost will include all monthly recurring, non-recurring, usage, volume discounts, term price options, and non-recurring charges as applicable. Contractor agrees that term pricing options will be limited to specifically designated Services approved by DGS/TD. Listed pricing will include all elements necessary to configure an instance of working Service (planning, application design, engineering, testing, wiring, termination, installation, and training) whether prices separately or bundled. Any no-cost items will be clearly identified with applicable rate schedule. Contractor agrees that Service elements without associated pricing will be considered no charge items.

59. SERVICE TAXES AND SURCHARGES

Contractor agrees that the State and authorized users of this Contract will only be subject to service taxes, surcharges, and surcredits that are mandated by the FCC and CPUC to be recovered from end users of the applicable Service. Contractor agrees to notify DGS/TD in writing 60 days prior to the effective date of any additions or changes. Applicable taxes, surcharges, or surcredits will not be included in Service pricing but will be listed in appropriate pricing attachments to this Contract. Contractor agrees only taxes, surcharges, or surcredits approved by the State for inclusion in this Contract may be applied to customer invoices. All charges under this Contract are exclusive of applicable federal, state and local sales, use, excise, utility, and gross receipt taxes, other similar tax-like charges and surcharges. Contractor agrees to exempt the State and authorized users from all federal taxes as of the date Contractor receives a duly authorized and valid exemption certificate. Contractor will provide the State the exemption certificate that complies with the requirements of the Internal Revenue Code and Regulations; see Internal Revenue Regulations section 49.4253-11 and IRS Publication 510 (2/2004). Contractor agrees, for the purpose of exemption, that the State will act as the authorized agent for this Contract in submitting a single exemption request on behalf of all state agencies. The State will provide the certification form to authorized local government users. Local government entities will be responsible for submitting exemption requests to Contractor.

60. ADMINISTRATIVE FEE

Contractor agrees to pay DGS/TD an administrative reimbursement as required and established by the DGS/TD. The administrative reimbursement shall be used to fund only DGS/TD activities, or DGS/TD funded State offices and activities. DGS/TD's objective is not to increase the administrative fee associated with any existing Service or establish an administrative fee associated with any new Service if when combined with Contractor's Contract rate for the Service the administrative fee raises the total price for the Service to a level that is non-competitive with similar services available in the telecommunications industry. Notwithstanding this objective in all events DGS/TD shall be entitled to an administrative fee increase equal to the Consumer Price Index (CPI) over the relevant Contract Term should an increase be required to fund DGS/TD activities or DGS/TD funded State offices and activities. The CPI is published by the U.S. Department of Labor, Bureau of Labor Statistics. For this Contract the following will be utilized: the CPI-U Index,; not seasonally adjusted; US city average area, all items series adjusted annually. Until the Contract has been awarded and the Contractor rates determined, DGS/TD is unable to determine administrative fee rates that will be applied on any service or services. Accordingly, and on behalf of DGS/TD, Contractor will bill, collect and remit a Contract administrative fee. The administrative fee may be applied to any and all contracted Services offered under this Contract. This fee shall be determined by DGS/TD and shall be included within the amount charged to those agencies obtaining Services pursuant to this Contract. The administrative fee reimbursement amount shall appear on the monthly billing summaries and monthly fiscal management reports delivered to DGS/TD.

- a. Contractor shall bill, collect and remit a check based on the amount billed for this administrative fee to DGS/TD on a monthly basis at no additional cost. The administrative fee shall be paid to DGS/TD no later than the 30th of the month, for the amount billed two months preceding. Contractor shall pay a late payment fee of the lesser of 0.5% per month, or the maximum amount permitted by law, on any such administrative fees not paid to DGS/TD when due. The fee will be based on DGS/TD costs to manage this Contract as well as perform other mandated functions and may be adjusted annually or as otherwise deemed necessary by DGS/TD, based on fiscal year projected requirements.
- b. Contractor agrees to provide monthly fiscal management reports identifying all Services implemented under this Contract to both DGS/TD and to the individual agency/customers as described in RFP Section 6.16.

61. INVOICES AND PAYMENTS

The consideration to be paid Contractor, as provided in this Contract, the RFP and the Proposal shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise provided in a writing executed by the State. Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall include the information set forth in the RFP and shall otherwise be consistent with the provisions of this Section and the RFP. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable. In addition, each invoice shall be in the form reasonably specified by the State (including whether issued as a single, aggregate invoice or separate invoices for different Services or entities) and shall (i) comply with all applicable legal, regulatory and accounting requirements, (ii) allow the State to validate volumes and charges, (iii) permit the State to chargeback internally, and (iv) meet the State's billing requirements. Each invoice shall include the pricing calculations and related data utilized to establish the charges. Invoices

with a name other than that established in the original Contract, including Attachment 8, cannot be paid prior to execution of a Contract Amendment. The data underlying each invoice shall also be delivered to the State electronically in a form and format compatible with the State's accounting systems. When provision is made for a testing period preceding acceptance by the State, the date of acceptance shall mean the date the Equipment, Software or Service was accepted by the State during the specified period. The backbilling limitation of charges shall be controlled by Government Code Section 911.2.

62. CONTRACTOR COMMITMENTS AND REPRESENTATIONS

Any written commitment by a duly authorized representative of Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill any such commitment shall render Contractor liable for performance deficiency charges or other damages due to the State as set forth herein. Such written commitments include but are not limited to (1) any warranty or representation expressly made by Contractor as to Deliverables, Service, Equipment or Software performance, total System performance, or other physical design or functioning characteristics of a Machine or Software System, (2) any warranty or representation expressly made by Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and (3) any written notification of or affirmation or representation as to the above which is made by Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the Contract.

63. SERVICE TO PUBLIC ENTITIES

In accordance with Government Code Section 14931, Contractor agrees to provide Service to all public agencies in the State pursuant to this Contract and hereby acknowledges that the State is not responsible for payment for Services rendered these entities. Contractor agrees that it shall have no recourse against the State for any act or omission of the local entity which arises from Contractor furnishing goods or Services pursuant to this Contract. Contractor understands and acknowledges that under this Contract the State neither promises nor guarantees any minimum amount of revenue for Contractor or minimum amount of Deliverables or Services to be purchased.

64. TERMINAL EQUIPMENT

Contractor agrees that no modifications to or replacement of the State's existing terminal Equipment will be made which would result in any cost to the State or local entity receiving the Service, unless specifically provided for under the terms of this Contract.

65. PROPRIETARY EQUIPMENT

Contractor agrees to accommodate all State and other authorized users which currently utilize proprietary Equipment associated with Contractor's proposed Services.

66. DATA SERVICES

Contractor agrees to provide an option for agencies to obtain the necessary Customer Premise Equipment ("CPE"), required to support data Services during transition to Contractor provided Services.

67. AVAILABILITY OF REFRESHED TECHNOLOGY AND ADDITIONAL SERVICE ITEMS

Contractor shall evolve, supplement and enhance the Services in the normal course of business during the Term, both to keep pace with and utilize technological advancements and improvements in the method of delivering telecommunications-related services (and the pricing thereof), and to keep pace with changes and additions to the Services and products offered by Contractor (and the pricing thereof). Contractor also acknowledges that the telecommunications environment is critical to the State's business success, that the State's needs and requirements with regard to the telecommunications environment shall evolve and change over time, and that the need for enhanced or modified functionality will arise from time to time. Therefore, from time to time during the Term, but not less frequently than once each Contract year, Contractor shall meet and confer with the State, and either party may suggest any reasonable and appropriate changes or additional Service items needed or that might be considered to keep pace with and take advantage of the latest and most useful technological advancements and improvements in Contractor's performance of the Services (collectively, "**Enhancements**"). Contractor agrees that when such Enhancements substitute, replace or improve Deliverables or Service items already being received by the State (e.g., network upgrades), Contractor will make such Enhancements available to the State under this Contract at no additional cost to the State. In all other cases (e.g., when the Enhancements do not substitute, replace or improve Deliverables or Service items already being received by the State, but instead add to the Deliverables or Service items additional material functionality and features), Contractor will make such Enhancements available to the State under this Contract and provide competitive pricing therefor. With each proposal to add an Enhancement, Contractor will provide a business case that includes potential users and market analysis that illustrates competitive pricing, if applicable. The State, in its sole discretion, shall determine whether to approve of such Enhancement's inclusion under this Contract. If the State chooses to proceed hereunder, the State and Contractor will negotiate in good faith to agree on the additional terms and conditions, if any, under which the Enhancement will be added to this Contract through amendment and Contractor shall update any applicable marketing plans used in connection with the provision of the Deliverables and Services hereunder. Contractor understands that DGS is fully responsible for this approval and agrees, absent written approval from DGS, Enhancements cannot be added to this Contract at the request of any State or non-State agency. In addition, to the extent that the Services include CPE or Contractor proprietary Equipment, the State may, at its sole option, procure alternative equipment to such CPE or Contractor proprietary Equipment and use such alternative Equipment in connection with the Services, provided that it meets the functional and technical specifications required to obtain the Services.

68. PRICING AND SERVICE REVIEW

For the purpose of maintaining competitiveness throughout the Term, Contractor agrees to joint review of its pricing and Service functionality throughout the Term to ensure the State and its customers will receive cost-competitive and technologically competitive Services throughout the Term. Contractor agrees that written amendments to this Contract to reduce rates and introduce technological Service improvements may be submitted throughout the Term.

69. “MOST FAVORED NATION” STATUS OF STATE

Contractor agrees to give the State and customers of this Contract “Most Favored Nation” status, in that Contractor agrees that no other customer of Contractor or any of its Affiliates will receive lower rates for substantially similar services offered when the volume of business from the other customer is equal to or less than the volume of business the State delivers under this Contract. Contractor agrees to promptly bring to State’s attention instances in which other customers of Contractor or any of its Affiliates may receive lower rates for substantially similar services. If Contractor or its Affiliates offer lower rates to any other customer for the same or substantially similar services, Contractor shall adjust the State’s rates to match or beat such rates effective as of the date such lower rates were first offered to such other customer and shall pay or credit to the State any amounts necessary to reflect such adjustment. At the end of each Contract year, a financial officer of Contractor shall certify in writing that Contractor has strictly complied with this provision. If Contractor is not in compliance with this Section, Contractor and the State shall make such adjustments or payments as necessary and described above.

70. INDIVIDUAL CASE BASIS (ICB) PRICING OPTION

The State requires Contractor to list all Service pricing in Attachment 4. However the State recognizes there may instances where Contractor cannot anticipate or establish a specific cost in Attachment 4 for a Service because of issues such as complexity, facility availability, or other Service provisioning requirements. The State will entertain the use of Individual Case Based Pricing only in specific situations and under the parameters detailed below:

- a. Contractor will provide documentation to the State that demonstrates that its ICB Pricing is developed through its corporate ICB process and is consistent with CPUC guidelines.
- b. ICB Pricing is a customer specific pricing methodology based on the following components:
 - i. Capital investment required by Contractor. It includes the pro-rata share of existing capital and new incremental capital dedicated to the opportunity.
 - ii. Related expense to provide the Service. It includes expense such as installation, repair, billing, monitoring, on-going maintenance and other business and operating expense.

ICB Prices will only be offered if the prices are determined by Contractor and the State to be financially feasible and in the interest of the customer. In the event a customer requests Service that Contractor deems financially unfeasible, Contractor will provide the rationale for its decision and discuss other potential Service options with DGS before advising the customer of the unavailability of ICB Prices.

ICB Pricing for managed projects will be consistent with the terms and conditions of this Contract defined in RFP Section 6.13.3, Contracted Service Project Work.

ICB Pricing is supported by the following CPUC decisions:

General Order 96-A
CPUC Decision 91-07-010
CPUC Decision 94-09-065
CPUC Decision 96-03-020

Consistent with State Contract oversight responsibilities, the following ICB price options conditions will apply:

- i. In the event that CPUC guidelines or Contractor's corporate processes as referenced herein are materially revised, Contractor shall obtain approval from DGS prior to presenting ICB pricing opportunities utilizing the changed guidelines or corporate processes.
- ii. DGS/TD will act as the approving authority where ICB price options are offered outside of Attachment 4 price schedules.
- iii. Contractor will provide DGS with monthly ICB pricing information that identifies: i) Customer, ii) location, iii) Service, iv) pricing, v) term, and vi) whether the offer was accepted or rejected.
- iv. Authorized users may not sign up for ICB pricing that extends beyond Term of this Contract, including any extension period(s).
- v. All Services with an ICB pricing option will contain a reference in the appropriate Attachment.
- vi. DGS may request that an ICB pricing option be evaluated for a customer.
- vii. DGS may request an explanation of ICB pricing options presented to or implemented for customers of this Contract.

71. FEDERAL UNIVERSAL SERVICE FUND

Federal Grant programs are available to schools and libraries under the Universal Service Fund. This program, also referred to as E-rate funding, provides supports to schools and libraries in accessing telecommunications services. Contractor agrees to:

- a. Provide Contract telecommunications Services to public entities qualified for Universal Service Fund Support;
- b. Be certified as a USAC;
- c. Meet Federal requirements for timeliness and accuracy in processing E-rate and other USAC program request and invoicing; and
- d. Ensure that DGS has pre-approved the use of Contract Services by public entities otherwise qualified for the Federal Universal Service Fund.

72. TITLE TO EQUIPMENT

Title to Equipment, accessories, and devices provided under this Contract shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by Contractor hereunder, except those purchased by the State, shall accompany the Equipment when returned to Contractor.

73. UNLAWFUL USE

Customer will not use any Service for any unlawful purpose. Contractor reserves the right to take any action it deems necessary to prevent unlawful use and to control fraudulent use. Such actions by Contractor may include, but are not limited to, blocking certain traffic, refusing to accept calling card, collect calling and or third number calls, or discontinuing provision of Service to the end user or canceling the end user's account.

74. TRANSITION-IN PLAN FOR TURNOVER OF CONTRACTOR SERVICES

Contractor shall prepare and deliver to the State a Transition-In Plan for transitioning the provision of services pursuant to CALNET I to the provision of Services pursuant to this CALNET II as set forth in this Contract pursuant to RFP SECTION 6 – Business and Technical Requirements, 6.18 Required Implementation/Transition Strategy. Contractor shall, at Contractor's sole expense, implement the Transition-In Plan and perform all tasks in accordance with the approved transition plan schedule, so that there is no disruption or discontinuity in CALNET service from the incumbent contractor to Contractor for the transition and such that the State does not incur any period whereby the State is subject to charges pursuant to both CALNET I and this CALNET II. If the State determines that Contractor has not complied, or is likely to not comply, with any transition or turnover requirements identified in the Transition-In Plan, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of Contractor, the State shall give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State the services of all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have five (5) days, or longer if agreed to by the State in writing, to achieve compliance. For each transition or turnover requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for a performance deficiency charge of up to \$10,000 per day until Contractor is in compliance with the requirements of the Transition-In Plan. Any duties and obligations of Contractor under the Contract necessary to complete transition that have not been performed at the time of Contract termination shall holdover and continue in effect beyond any expiration or termination of the Contract Term.

75. DISENTANGLEMENT (TRANSITION-OUT)

- a. Term of Disentanglement. The Disentanglement process shall begin on the earlier of the following dates (as applicable, the "**Disentanglement Commencement Date**"): (a) as elected by the State, up to sixty (60) calendar days prior to the end of the Term that the State has not elected to extend pursuant to Section 78 or has already extended fully

as permitted under Section 78; (b) the date a Notice of Termination is delivered pursuant to Section 18 or 19; or (c) the State's election pursuant to Section 56 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself. Contractor shall provide Disentanglement Services until it has completed the obligations of this Section. Contractor's obligation to continue to provide the affected Services shall continue until the earlier of (i) completion of a transition to a new service provider as provided in this Section, or (ii) twenty-four (24) months after the effective date of any termination or expiration.

- b. Disentanglement (Transition-Out) Plan. Contractor shall prepare and deliver to the State a Disentanglement Plan, or Transition-Out Plan, for transitioning the provision of Services, or portion thereof, under this Contract to the State's alternate service provider pursuant to RFP SECTION 6 – Business and Technical Requirements, 6.18 Required Implementation/Transition Strategy in the event of: (i) the expiration or termination of the Term; or (ii) the State's election during the Term pursuant to Section 56 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself. Contractor shall implement the Transition-Out Plan and perform all tasks in a timely manner, so that there is no disruption or discontinuity in CALNET II service from Contractor to the State or State's designee for the Transition-Out. Contractor shall participate in meetings with the State and the State's alternate service provider (e.g., CALNET III) as reasonably required by the State in planning for a transition and implementing the Transition-Out Plan.
- c. Disentanglement Services. Subject to the performance by the State and any subsequent provider of services similar to the Services of all actions reasonably expected of each party in connection with the transition, Contractor shall cooperate fully with the State and third parties and shall take all actions reasonably requested by the State or necessary to accomplish, by no later than twenty-four (24) months after: (i) the effective date of expiration or termination of the Term or (ii) the State's election during the Term pursuant to Section 56 to obtain any portion, component, subset or all of the Services offered under the terms and conditions of this Contract, or any other services (analogous, similar, comparable or otherwise) from third parties, or to provide the same to itself, a smooth, complete transition of responsibility for the Services being terminated from Contractor to the State, or to any replacement provider designated by the State (a **"Disentanglement"**), with no material interruption of or adverse impact on the State in any way, including on the Services. In the event the State elects to terminate any Service (but not all Services in the aggregate) pursuant to the terms hereof, Contractor shall perform its Disentanglement obligations hereunder to the extent applicable to the Service or Services being terminated. Contractor's obligations hereunder regarding the collection and payment to the State of administrative fees shall continue throughout Disentanglement.
- d. Non-Compliance. If the State determines that Contractor has not complied, or is likely to not comply, with any Disentanglement or Transition-Out requirements identified in the

Transition-Out Plan, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of Contractor, the State shall give written notice to Contractor of non-compliance. After such notice, Contractor shall provide to the State all necessary additional Contractor personnel to accelerate performance as may be required or necessary to timely achieve compliance or, if Contractor has already failed to comply, achieve compliance within a re-adjusted time frame established by the State. Contractor shall have five (5) days, or longer if agreed to by the State in writing, to achieve compliance. For each Disentanglement or Transition-Out requirement not completed after the notice of non-compliance period, the State shall be entitled to invoice Contractor for a performance deficiency charge of up to \$10,000 per day until Contractor is in compliance with the requirements of the Transition-Out Plan

- e. **Charges.** All Disentanglement Services performed by Contractor during the transition shall be performed by Contractor at no additional cost to the State beyond what the State would pay for the Services absent the termination, in-sourcing or re-sourcing.
- f. **Delivery of State Data.** Contractor shall provide to the State all State data and documentation and other information reasonably requested by the State in connection with the transition that is sufficient to enable the State, or another reasonably competent service provider, to fully assume the provision of any terminated Services. Contractor shall destroy all copies of State data not turned over to the State.
- g. **Inventory.** Contractor shall provide to the State a complete and accurate inventory of all Software, data, Equipment, materials, third party licenses, third party leases, and third party contracts used to provide the Services, as well as the location thereof, entities serviced hereunder thereby, and such other information regarding such items as the State reasonably requests.
- h. **Transfer of Assets.** Effective as of the date of termination, Contractor shall, subject to Section 85, convey to the State (or its designee) such physical assets as the State may, in its sole discretion, select from among those assets then held and used by Contractor in or for the provision of Services, excluding those assets expressly agreed upon by the parties in writing from time to time, at a price consisting of the aggregate net book value of such selected assets at that time.
- i. **Transfer of Leases, Licenses and Contracts.** Effective as of the date of termination, Contractor, at its expense, shall convey or assign to the State (or its designee) such leases, licenses, and other contracts as the State may, in its sole discretion, select from among those directly associated with the use of properties, Software, or other goods or services by Contractor to facilitate or enable the performance of the Services. Notwithstanding anything to the contrary in this Contract, Contractor shall be responsible for the satisfaction and performance of all obligations (including all financial obligations) under any such leases, licenses, and other contracts that may be assigned or conveyed to the State (or its designee) with respect to periods prior to the date of any such conveyance or assignment, and Contractor shall indemnify and hold the State harmless from and against, and reimburse the State for any damages, liabilities, losses, costs, and expenses (including reasonable attorney's fees and out-of-pocket expenses) resulting

from, any claim that Contractor did not perform such obligations.

- j. License. Except as otherwise provided herein, Contractor, subject to having obtained any necessary required consents, upon Disentanglement and at no charge to the State, shall provide the State (or its designee) with a fully-paid, perpetual, royalty-free, worldwide license to use, copy, and modify all Contractor proprietary tools, Software, materials and other items that are needed in order to allow the State (or its designee) to continue to perform and receive the benefit of the Services. Contractor shall provide the State with a full and complete copy of each such item that constitutes Software, in such forms and media as requested by the State, together with all object code, source code, and then-available documentation thereto.

76. DISASTER RECOVERY AND SECURITY PLAN

Within ninety (90) days after the Effective Date, Contractor shall develop and submit to the State, for the State's review, comment and approval, a final, detailed disaster recovery and security plan applicable to all of the Services ("**Disaster Recovery and Security Plan**"); provided, however, that to the extent any portions of the Disaster Recovery and Security Plan are developed prior to the expiration of such ninety (90) day period, Contractor shall deliver such portions to the State as soon as they are so developed. Except where agreed to by the State, such final, detailed Disaster Recovery and Security Plan shall be consistent in all respects with the requirements (if any) set forth in the RFP and the initial draft Disaster Recovery and Security Plan submitted by Contractor as part of the Proposal. Immediately upon the State's approval of the Disaster Recovery and Security Plan, Contractor shall implement the same to the satisfaction of the State. Contractor shall ensure that the Disaster Recovery and Security Plan, and the corresponding disaster recovery and security Services provided by Contractor, shall be appropriate and comprehensive, using industry best practices and methods and state-of-the-art technology, to at all times ensure the availability, security, integrity and confidentiality of the Deliverables and Services. At least thirty (30) days prior to each anniversary of the Effective Date, Contractor shall revise the Disaster Recovery and Security Plan as appropriate to reflect any changes to the State's information-technology and/or telecommunications environment or requirements and submit it to the State for review, comment, and approval.

77. BENCHMARKING

Beginning twelve (12) months after the Effective Date and annually thereafter until any termination or expiration, at Contractor's expense, the State may engage an independent third party (a "**Benchmark**"), to benchmark the Services, Service Levels, and the charges hereunder. The selection of the Benchmarker shall be made by the State, subject to Contractor's approval, such approval not to be unreasonably withheld. In addition to the annual benchmarking activity, the State shall have the right to engage, at the State's own expense, a Benchmarker to conduct additional benchmarking activities prior to any termination or expiration of the Contract, provided that each such additional benchmarking activity is conducted no sooner than six (6) months after the annual benchmarking activity. The State and Contractor will discuss and determine in advance the scope, methodology, relative comparisons and execution for each benchmarking process (the "**Benchmarking Process**"). Each Benchmarking Process will be conducted, and the results documented, by the Benchmarker in a

commercially reasonable manner and in accordance with the applicable Benchmarking Process. The State and Contractor will review the results of each benchmark and determine if such benchmark results show that the charges for the benchmarked Services are less favorable than the most favorable of the prices charged by any other service provider examined by the Benchmarking Standard for similar services (the "**Benchmarking Standard**"). If the benchmark results show a variance between the charges for the benchmarked Services charged by Contractor hereunder and the Benchmarking Standard, then Contractor shall reduce its charges hereunder such that Contractor's total charges for the benchmarked Services do not exceed the Benchmarking Standard. If any subcontractor utilized by Contractor to provide telecommunications Services conducts a benchmarking or other review of the competitiveness of the pricing provided to Contractor under the applicable subcontract based on the then prevailing market rates and pricing for such Services (a "**Subcontract Pricing Review**") and, as a result of such Subcontract Pricing Review, the actual voice and/or data charges hereunder or under such subcontract (each a "**Subcontract Rate**") are reduced, then Contractor shall promptly notify the State of such reduction and shall reduce the corresponding voice and/or data charges under this Contract (each a "**Service Rate**") by an equal amount. Any reduction of a Service Rate under this Contract shall be effective as of the date on which the corresponding reduction in the Subcontract Rate is effective.

78. OFFER; TERM

From the date that Contractor executes this Contract ("**Signing Date**") until such time as the State executes this Contract and DGS approves the award of this Contract to Contractor, and as such process is further described in the RFP, this Contract constitutes the irrevocable, firm offer by Contractor to provide the Services to the State for the charges in accordance herewith. This Contract shall not be binding or of any legal force or effect on the State until the authorized execution of this Contract by the State and such approval by DGS ("**Effective Date**"). Notwithstanding the foregoing, from the Signing Date until the Effective Date, Contractor shall actively continue planning and working with the State to ensure the timely completion of all tasks necessary and sufficient to prepare for and achieve a smooth and seamless transition of the telecommunications services related to the ongoing operation, support, and maintenance of the State's telecommunications infrastructure from the State and its current third party service-providers to Contractor. The Term of this Contract shall commence on the Effective Date and shall continue until the end of the fifth (5th) anniversary of the Effective Date (the "**Term**"). In addition, the State may, at its sole option, elect to extend the Term for up to two (2) additional periods of one (1) year each. The State may exercise its option to extend by giving written notice of extension to Contractor prior to expiration of the Term. Contractor shall provide a reminder letter to the State ninety (90) calendar days prior to the end of the Term and each extension thereof if the State shall not have previously provided written notice to Contractor of its intent to extend the Contract prior to such dates. The Term shall also include the full period of any Disentanglement as provided in Section 75.

79. SUBCONTRACTORS

Contractor shall not subcontract all or any part of the Service without the prior written consent of the State. Each subcontractor may perform only the specific Services described with regard to such subcontractor in a written request submitted by Contractor to the State when seeking such consent; and no change may be made to the specific Services performed by a particular

subcontractor, and no substitution, replacement, or change of subcontractors may be made, without the advance written consent of the State. All performance of Services by each subcontractor shall at all times be in accordance with the terms and conditions of this Contract. Contractor covenants that its arrangements with subcontractors shall not prohibit or restrict any such subcontractor from, at any time, entering into direct agreements with the State. The State's consent with respect to Contractor's use of a particular proposed subcontractor, shall be given or withheld in writing within Contractor's reasonably requested timeframe, and, if such consent is withheld, the State's notice thereof to Contractor shall set forth the reasons for such withholding of consent. If the State determines in good faith and in a commercially reasonable manner that the performance or conduct of any subcontractor is unsatisfactory, the State may notify Contractor of its determination in writing, indicating the reasons therefor, in which event Contractor shall promptly take all necessary actions to remedy the performance or conduct of such subcontractor or to replace such subcontractor by another third party or by Contractor personnel. Contractor shall be solely and exclusively responsible for supervising the activities and performance of each subcontractor. Contractor and each such subcontractor shall be jointly and severally responsible for any act or omission of such subcontractor. Notwithstanding the fact that a subcontractor may be the party actually performing a particular Service or providing a particular Deliverable hereunder, Contractor shall at all times: (i) constitute the primary obligor for all of Contractor's duties and obligations hereunder; and (ii) be liable and responsible as a principal for the performance of all of the duties and obligations of Contractor hereunder that Contractor may elect to subcontract to any of its subcontractors or to any other third party.

80. DE MINIMIS SERVICE REQUESTS

Notwithstanding anything to the contrary provided in this Contract, if (i) the DGS/TD at any time during the Term requests services, products, or resources from Contractor and the parties cannot agree as to whether such services, products, or resources are within the scope of the Services, and (ii) the financial impact on Contractor of satisfying such request is less than Twenty-Five Thousand Dollars (\$25,000.00), then to the extent that the cumulative and aggregate amount of all such services, products, or resources so provided does not result in a financial impact on Contractor in excess of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) during any contract year: (a) such failure to agree shall not be deemed a disagreement; (b) such request shall be deemed a request for Services; and (c) all such services, products, or resources shall be provided to the State by Contractor in accordance with the terms of this Contract.

81. GOVERNANCE

- a. Before communicating any interpretation of this Contract to any entity receiving, or eligible to receive, Deliverables or Services under this Contract, Contractor shall first present such interpretation to the State and obtain the State's approval thereof.
- b. Committees and Meetings. During the Term, representatives of the State and Contractor shall meet periodically or as requested by the State to discuss matters arising under this Contract, including any such meetings provided for in the RFP or the Transition-In Plan. Contractor shall bear its own costs in connection with the attendance and participation in such meetings. Such meetings shall include, at a minimum, the

following:

- i. Operations. At least monthly, an operations committee shall meet to review Contractor's performance hereunder and any reports, any planned or expected activities and changes that might impact performance, and such other matters as appropriate.
- ii. Management. At least quarterly, a management committee shall meet to review Contractor's overall performance hereunder and any reports, progress on the resolution of any issues, to provide a strategic perspective for the State's telecommunication requirements, and such other matters as appropriate.
- iii. Executive. At least semi-annually, an executive committee shall meet to review Contractor's overall performance hereunder and the ongoing provision of the Services.

82. SECURITY AND POLICIES

In addition to any requirements in the RFP, at all times during the Term, Contractor shall provide all Services, use all resources related thereto, and use, operate, support, and maintain any Systems, in an appropriately secure manner and in accordance with the State's security requirements, policies, and procedures as communicated, modified, supplemented, or replaced by the State from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective ("**Security Policies**"). Contractor shall at all times take all necessary and appropriate action with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to and use of Systems and the networks involved with the provision or receipt of Services, including the implementation and deployment network management and maintenance applications and tools, the use of appropriate encryption technologies, and other security-related Services. In addition, all Contractor personnel (including personnel of any subcontractors) shall be subject to, and shall at all times conform to, all of the State's policies, procedures, rules, and requirements regarding the protection of premises, materials, equipment, and personnel. Contractor shall, and shall cause Contractor personnel and subcontractors to, fully comply with and abide by all such Security Policies at all times during the Term. Any violation or disregard of such Security Policies by an individual shall be cause for denial of access of such individual to the State's property. Contractor shall exercise due care and diligence to prevent any injury to person or damage to property while on the State's premises. The operation of Contractor vehicles or private vehicles of Contractor personnel on the State's property shall conform to posted and other regulations and safe driving practices. Vehicular accidents on the State's property and involving Contractor personnel shall be reported promptly to the appropriate State personnel. Contractor shall, and shall cause Contractor personnel and subcontractors, to not exceed (or attempt to exceed) the level of authorized access, if any, to any networks, computer or electronic data storage systems of the State that may be granted during the Term for purposes only of performing the Services hereunder.

83. NEWLY MANUFACTURED GOODS

All Goods furnished under this Contract shall be newly manufactured Goods; used or re-conditioned Goods are prohibited, unless otherwise specified.

84. DOCUMENTATION

- a. Contractor agrees to provide to the State, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. Contractor agrees to provide additional Documentation at prices not in excess of charges made by Contractor to its other customers for similar Documentation.
- b. If Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State Contractor will provide at Contractor's then current rates and charges adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If Contractor is unable to perform maintenance, Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by Contractor.

85. RIGHTS IN WORK PRODUCT

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "**Work Product**"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b. Software and other materials developed or otherwise obtained by or for Contractor or its Affiliates independently of this Contract or applicable purchase order ("**Pre-Existing Materials**") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 85 will be construed to interfere with Contractor's or its Affiliates' ownership of Pre-Existing Materials.
- c. The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "**Government Purpose Rights**" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "**Government Purpose Rights**" also include the right to release or

disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "**Government Purpose Rights**" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.

- d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by Contractor or jointly by Contractor and the State may be used by either party without obligation of notice or accounting.
- e. This Contract shall not preclude Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

86. ELECTRONIC WASTE RECYCLING ACT OF 2003

Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

87. USE TAX COLLECTION

In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

88. EXPATRIATE CORPORATIONS

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.

89. DOMESTIC PARTNERS

Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

ATTACHMENT 2 – STATEMENT OF WORK

This Statement of Work consists of the terms and conditions set forth in Sections 3, 4 and 6 of the RFP (and all attachments and exhibits thereto), the Proposal, and such other provisions of the Contract that describe the Deliverables and/or the Services, all of which are incorporated by reference into and considered part of this Statement of Work. This Statement of Work may be revised upon mutual agreement of the State and the Contractor in accordance with the terms of the Contract.

ATTACHMENT 3 – DESCRIPTION OF SERVICES

Contractor shall provide to the State all of the Deliverables and Services described in the Statement of Work. Subsequent to the Notification of Intent to Award, Contractor shall provide herein a list of all Deliverables and Services (with descriptions, availability and unique identifiers, including features) available under the Contract for attachment to and inclusion in the Contract. This list shall correspond with Attachment 4, Pricing, and shall be maintained on a public Web Site in accordance with Section 6.17.1. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

ATTACHMENT 4 - PRICING

All Pricing language, along with details of Attachment 3, shall be developed by the Contractor and provided to the State subsequent to the Notification of Intent to Award for attachment to and inclusion in the Contract. Contractor shall provide herein a list of all Deliverables and Services rates, including features, available under the Contract. The prices contained in this list shall correspond exactly with the cost tables submitted with the bidder's Final proposal in response to Section 7, Costs. This price list shall be maintained on a public Web Site in accordance with Section 6.17.1. Such list may be modified by mutual agreement of the State and Contractor via a written amendment.

ATTACHMENT 5 – ORDERING DOCUMENTS

1. PROVISION OF DELIVERABLES AND SERVICES:

As described in Section 2(d) of the General Provisions, State and local agencies and other governmental entities empowered to expend public funds may order Deliverables and Services under this Contract by issuing the appropriate Ordering Document form as follows:

- Std. Form 20 for State agencies (Exhibit A-1).
- Authorization to Order for non-State agencies (Exhibit A-2).
- Std. Form 65 for State agencies (Exhibit A-3).
- Work Authorization Form (Exhibit A-4).

Contractor will not commence provisioning Deliverables or Services for a given State or local agency and other governmental entity until Contractor receives a complete and accurate Std. Form 20, Authorization to Order, Std. Form 65, or Work Authorization, as applicable, or other authorized Service ordering mechanism for such entity. In addition, the provisioning of Deliverables or Services may be authorized via a web-enabled application in accordance with Section 6.17.4 of the RFP.

EXHIBIT A-1 - STD. FORM 20

EXHIBIT A-2 - AUTHORIZATION TO ORDER

EXHIBIT A-3 - STD. FORM 65

EXHIBIT A-4 – WORK AUTHORIZATION

STATE OF CALIFORNIA TELECOMMUNICATIONS SERVICE REQUEST (Attach additional information as needed)				1. AGENCY REQUEST NO. 2. DATE
3. REQUEST IS FOR:	<input type="checkbox"/> SERVICE <input type="checkbox"/> EQUIPMENT (needs a Form 65) <input type="checkbox"/> OTHER			
4. AGENCY INFORMATION	DEPARTMENT		DIVISION, BUREAU, ETC.	
	E-MAIL ADDRESS		PERSON TO CONTACT FOR ACCESS	
	TELEPHONE NO. ()		FAX NO. ()	
	ADDRESS OF PRESENT SERVICE (Include City, Zip Code, Room #s)		ADDRESS OF REQUESTED SERVICE (Include City, Zip Code, Room #s)	
	BILLING ADDRESS (Include City, Zip Code, Room #s)		C60 Account Number	
5. ELIGIBILITY	<input type="checkbox"/> STATE AGENCY		Must complete Authorization to Order (ATO) to obtain eligibility prior to first Form 20 request <input type="checkbox"/> NON-PROFIT & TAX-SUPPORTED <input type="checkbox"/> LOCAL GOVERNMENT (i.e. city, county)	
	<input type="checkbox"/> FEDERAL		<input type="checkbox"/> JOINT POWERS AGREEMENT	
6. CHECK TYPE OF REQUEST <small>(Describe in Section 7)</small>	<input type="checkbox"/> BUSINESS SERVICE <input type="checkbox"/> SINGLE LINE <input type="checkbox"/> KEY SYSTEM <input type="checkbox"/> PBX <input type="checkbox"/> TRUNKS		<input type="checkbox"/> CENTREX SERVICE <input type="checkbox"/> SINGLE LINE (s) <input type="checkbox"/> ISDN (Integrated Services Digital Network) <input type="checkbox"/> ACD (Automatic Call Distribution)	
	<input type="checkbox"/> DATA SERVICE		<input type="checkbox"/> CALNET CALLING CARD (Include TD-907)	
	<input type="checkbox"/> CELLULAR TELEPHONE		<input type="checkbox"/> LONG DISTANCE SERVICE	
	<input type="checkbox"/> DGS-TD MASTER CONSULTING CONTRACT		<input type="checkbox"/> LOCAL TOLL SERVICE	
			<input type="checkbox"/> OTHER (Please Describe)	
7. ADDITIONAL INFORMATION	BRIEFLY DESCRIBE PRESENT SERVICE (Attach page as needed)		BRIEFLY DESCRIBE SERVICE REQUESTED (Attach page as needed.)	
	SERVING UTILITY			
	TOTAL COST OF REQUESTED SERVICE		METHOD OF ACQUISITION	
	RECURRING	NON-RECURRING	<input type="checkbox"/> PURCHASE <input type="checkbox"/> INSTALLMENT <input type="checkbox"/> PURCHASE <input type="checkbox"/> RENT <input type="checkbox"/> OTHER (Describe)	
8. CATR/ATR INFORMATION	NAME (PLEASE PRINT)		E-MAIL ADDRESS	
	ADDRESS CITY STATE ZIPCODE		TELEPHONE NO.	
	TITLE		CALNET:	
	SIGNATURE "This request complies with SAM Chapter 4500, and state telecommunications policies."		PUBLIC: ()	
			DATE	

*SAM = [State Administrative Manual](#)*STMM = [State Telecommunications Management Manual](#)*ATR = [Agency Telecommunications Representative](#)[STD. 20 Instructions](#)

EXHIBIT A-2**AUTHORIZATION TO ORDER UNDER STATE CONTRACT**

_____ ("Contractor") and the State of California ("State") have entered into a Contract for Service(s) dated _____ ("Contract"). Pursuant to the Contract, which is incorporated herein by reference, public agencies as defined in Government Code Section 14931 (herein, "Municipalities") are allowed to order services and products solely as set forth in the Contract ("Service(s)"), upon execution of this Authorization to Order. A description of the Service(s), applicable rates and charges and the specific terms and conditions under which the Service(s) will be provided to Municipalities of the State (e.g., cities, counties, school districts and other such entities of the State) are fully set forth in the Contract.

_____ ("Municipality") desires to order Service(s) and Contractor agrees to provide such Service(s) as identified in Attachment 1 of the Authorization to Order, pursuant to the terms and conditions and rate tables contained in the Contract.

1. Municipality may, by placing service orders issued by its duly authorized representative with Contractor, order any of the Service(s) listed in the Contract. Contractor shall bill Municipality and Municipality shall pay Contractor according to the terms and conditions and rate tables set forth in the Contract for such Service(s).

2. This Authorization to Order shall become effective upon execution by Municipality, Contractor, and the Department of General Services, Telecommunications Division (DGS/TD) ("Effective Date"). No Service(s) shall be ordered by Municipality or provided by Contractor until this Authorization to Order has been executed by both parties and approved by DGS/TD.

3. All Service(s) ordered under this Authorization to Order will be submitted using the State of California Standard Form 20, Telecommunications Service Request, signed by the Municipality's authorized signatory. Any additions or deletions to Service(s) shall likewise be accomplished by submission of the STD 20, noting changes. The Municipality may include a new Attachment 1. Submittal of a new Authorization to Order is not required.

4. The DGS/TD will provide Contract management and oversight and upon request by the Municipality or Contractor, advocates to resolve Contract service issues. The Authorization to Order is a Contract between the Municipality and the Contractor. The State will not represent the Municipality in resolution of litigated disputes between the parties.

5. By executing this Authorization to Order, Municipality agrees to subscribe to and Contractor agrees to provide Service(s) in accordance with the terms and conditions of this Authorization to Order and the Contract. All parties shall be delivered a fully executed Authorization to Order, by the Contractor within seven working days.

6. Municipality, upon execution of this Authorization to Order, certifies that Municipality understands that Contractor and the State may, from time to time and without Municipality's consent, amend the terms and conditions of the Contract thereby affecting the terms of service Municipality receives from Contractor.

7. Municipality, upon execution of this Authorization to Order, certifies that Municipality has received and has reviewed the terms and conditions, including the rates and charges, of the Contract.

8. Municipality, upon execution of this Authorization to Order, certifies the Municipality understands that billing invoices for Service(s) subscribed to under the Contract are subject to audit pursuant to provisions of the Contract.

9. This Authorization to Order shall continue in effect from the Effective Date through the remainder of the term of the Contract, unless earlier terminated. Municipality may terminate this Authorization to Order, for specific Service(s) or in total, prior to termination of the Contract by providing the Contractor with thirty (30) days written notice of cancellation.

10. A Municipality that elects early termination of a Service(s) on Attachment 1 that required capital investment by the Contractor to provision Service(s) specifically for the Municipality, will be subject to a 15% termination penalty of that portion of the Contractor's capital investment that has not been amortized over the Service term using Generally Accepted Accounting Principles. The Contractor shall be required to provide, in writing, the Municipality with the projected capital costs prior to execution of the Authorization to Order. If projected capital costs are not provided, the capital cost shall be deemed to be zero. Notwithstanding this clause, if the required Service(s) hereunder are installed, and after the first fiscal year funds are not appropriated to enable the Municipality to continue paying for services, or universal service discounts are not received, the Municipality may terminate impacted Service(s) without penalty.

11. Whenever any notice or demand is to be given under this Contract to Contractor or Municipality, the notice shall be in writing and addressed to the following:

Municipality:

Contractor:

Attn: _____

Attn: Contract Program Manager

Notices delivered by overnight courier service shall be deemed delivered on the day following mailing. Notices mailed by U.S. Mail, postage prepaid, registered or certified with return receipt requested, shall be deemed delivered five (5) days after mailing. Notices delivered by any other method shall be deemed given upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Authorization to Order to be executed on the date shown below by their respective duly authorized representatives

Contractor _____

(Municipality)

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Approved By:
Department of General Services,
Telecommunications Division

By: _____

Title: _____

Date Signed: _____

EXHIBIT A-2, ATTACHMENT 1

MUNICIPALITY: _____

PRODUCTS AND SERVICES

Product Service Identifier

DEPARTMENT OF GENERAL SERVICES
TELECOMMUNICATIONS DIVISION
601 SEQUOIA PACIFIC BOULEVARD
SACRAMENTO, CA 95814-0282

TELECOMMUNICATIONS
SERVICES

TD-933 (NEW 11-98)

DGS-2053 WORK AUTHORIZATION

DISCIPLINE: DGS-2053 Telecommunications Services

CONTRACTOR: _____ CONTRACT#: _____

AGENCY: _____

AGENCY PROJECT CONTACT: _____

TITLE: _____

TELEPHONE NUMBER: _____

PROJECT DESCRIPTION:

CONSTRAINTS or SPECIAL REQUIREMENTS:

TASKS DEFINITION AND SCHEDULE :

PROJECT START DATE:

COMPLETION DATE:

PROJECT COSTS:

DGS-TD Contract Administrative Fee:

TOTAL PROJECT FUNDING:

BONDING REQUIRED? ☐ N/A ☐ YES ☐ NO

The Work Authorization is contingent upon placement of a Faithful Performance Bond in the amount of \$ _____ within 15 days of Work Authorization receipt.

APPROVAL: _____
DEPARTMENT OF GENERAL SERVICES
TELECOMMUNICATIONS DIVISION

DATE

ATTACHMENT 6 – ACCEPTANCE TESTING

1. GENERAL: The purpose of this Attachment 6 is to set forth the acceptance criteria and specific acceptance procedures for certain Deliverables and Services offered by Contractor under this Contract.
2. ACCEPTANCE TESTING OF CALNET II SERVICES:

A. Scope of Testing. Acceptance testing of Services installed for CALNET II will be performed in accordance with the implementation schedule defined in the RFP. Deliverables and Services subject to testing are those that are new (i.e., not previously in use) to the State upon implementation of CALNET II, or existing Deliverables and Services that are affected by the implementation of CALNET II. These services include:

(1) New SONET/ATM and DS3/ATM transport facilities installed to support the CALNET ATM/SONET Integrated Backbone. The associated Aggregation Point (AP) switching equipment, Frame Relay User Network Interfaces (UNIs), and ATM UNIs are previously in service, and will not be included in the acceptance testing.

(2) Existing Centrex, PBX, or CentraNet locations converted to, dedicated DS1 or Primary Rate ISDN links to VNET or the Private Switched Network (PSN).

(3) Centrex or CentraNet locations, including remotes that are re-homed.

(4) Any other service classes that are new to the State (i.e. not previously used by the State) upon implementation of the initial network, or existing services that are substantially affected by the implementation of the network.

The acceptance criteria for each Deliverable and Service above shall be the performance level and functionality for that Deliverable or Service as indicated in the applicable Ordering Document.

B. Pre-Cutover Testing. Prior to cutover of each of the above Deliverables and Services, the Contractor shall perform a pre-cutover test, as described in Section D. below, to confirm the operation of the Deliverable or Service at the acceptance criteria level. After completion of the pre-cutover test, Contractor will notify the State that the Deliverable or Service is installed and cutover, and ready for acceptance testing. Contractor shall provide the State a copy of the test procedures, data and results from the pre-cutover test and schedule an acceptance test within 5 business days unless otherwise agreed to by the State. The State may, at its option,

waive the acceptance test and accept the Deliverable or Service based on the Contractor provided pre-cutover data.

- C. Acceptance Testing. The procedures for acceptance testing of each of the above Deliverables and Services are described in Section D. below. An authorized representative of the State may be present during the scheduled acceptance test. If the Deliverable or Service meets the acceptance criteria, the Deliverable or Service shall be deemed accepted by the State. If the Deliverable or Service fails to meet the acceptance criteria, Contractor will promptly take any necessary corrective action, correct the nonconformity within 5 business days thereof, and restart the acceptance process. If the Contractor is unable to resolve repeated failures of the Deliverable or Service to meet the acceptance criteria, the State may invoke all rights and remedies set forth in the General Provisions.

D. Procedures for Pre-Cutover and Acceptance Testing.

(1) In both pre-cutover and acceptance tests, the ATM/SONET backbone will be tested by establishing a DS1 frame relay access circuit to an Aggregation Point switch. The frame relay circuit will then be connected to an industry standard frame relay data set capable of generating and sending test frames, and analyzing returned frames. A test PVC will be configured so as to traverse the newly installed facilities, and looped-back at the remote end. Test frames will be sent over a period of at least 24 hours, and analyzed for conformance to the criteria in the applicable Ordering Document. A point-to-point dedicated DS0 circuit traversing the newly installed facility will be installed and tested using industry standard testing for a dedicated DS0 circuit.

(2) In both pre-cutover and acceptance tests, existing Centrex, PBX, or CentraNet locations converted to dedicated DS1 or Primary Rate ISDN links to VNET or the Private Switched Network (PSN) will be tested by placing test calls from one or more stations served by the Centrex, PBX, or CentraNet. A list of numbers, representative of on-net and off-net calling, will be identified for the purpose of placing test calls. For each line class of service, calls will be placed to the test numbers, and the times of the calls will be documented. Conformance to the criteria in the applicable Ordering Document will be documented for each call. Billing record generation will be verified.

(3) In both pre-cutover and acceptance tests, Centrex or CentraNet locations converted to PBX, or Centrex/CentraNet remotes that are rehomed will be tested by comparing switch translation against the station inventory and feature list and each line will be tested for dial tone. A list of numbers, representative of on-net and off-net calling, will be identified for the purpose of placing test calls. For each line class of service, calls will

be placed to the test numbers and the times of the calls will be documented. Conformance to the criteria in the applicable Ordering Document will be documented for each call. Billing record generation will be verified. In the acceptance test, the features, as specified in the applicable Ordering Document, will be tested on-site for a representative station from each line class of service. Lines with complex features, such as ACD, will be specifically identified, and each line will be tested on-site for feature operation. Feature testing will include the Nortel proprietary sets currently used by the State.

- E. Omitted Test Criteria. To the extent that any Deliverable or Service is subject to testing as provided in this Section 2 of this Attachment 6, but specific testing criteria are omitted from or not developed pursuant to this Contract, the State's testing criteria shall be that the tested items meet the requirements of this Contract and the applicable Statement of Work to the State's reasonable satisfaction.

3. ACCEPTANCE TESTING OF ADDITIONAL DELIVERABLES AND SERVICES:

- A. Scope of Testing. Individual Deliverables and Services not subject to the acceptance testing described above, added to this Contract, or Deliverables or Services substituted or field modified by the Contractor subsequent to the award of this Contract shall undergo acceptance testing in accordance with the procedures set forth herein. For each Deliverable or Service, Contractor will submit to the State a specific Deliverable or Service implementation schedule that sets forth the installation and cutover dates for the Deliverable and Service as agreed to by the State and Contractor. Contractor shall also submit to the State a service test plan which sets forth the acceptance criteria and the functional and performance tests to be conducted on the Deliverable or Service, as mutually agreed to by the State and Contractor. Testing shall be in accordance with generally accepted industry standards and shall be done at a representative location agreed to by Contractor and the State. If requested by the State, the tests shall be conducted by Contractor in the presence of an authorized representative of the State.
- B. Pre-Cutover Testing. Prior to cutover of a Deliverable or Service, the Contractor shall perform a pre-cutover test to confirm the operation of the Deliverable or Service at the acceptance criteria level set forth in the Deliverable or Service test plan. After completion of the pre-cutover test, Contractor will notify the State that the Deliverable or Service is installed and cutover, and ready for acceptance testing. Contractor shall provide the State a copy of the test procedures, data and results from the pre-cutover test and schedule an acceptance test within 5 business days unless otherwise agreed to by the State. The State may, at its option,

waive the acceptance test and accept the Deliverable or Service based on the Contractor provided pre-cutover data.

- C. Acceptance Testing. The Deliverable or Service will undergo a 30-day acceptance testing period for compliance with acceptance criteria specified in the Deliverable or Service test plan. Acceptance or rejection of the Service will be made by the State following successful completion of the test. If the Service fails to meet the acceptance criteria, Contractor will promptly take any necessary corrective action, correct the nonconformity within 5 business days thereof, and restart the acceptance process. If the Contractor is unable to resolve repeated failure of the service to meet the acceptance criteria, the State may invoke all rights and remedies set forth in the General Provisions.
4. System Acceptance Testing: If any Service accepted by the State is a component of or a subset of a System or larger Service offering, such acceptance shall be conditional and the State may revoke its acceptance of such Service in the event that such System or larger Service offering is rejected in accordance with the acceptance testing procedures set forth herein.
5. Payment: The State or any authorized user shall have no obligation to make payment for Deliverables and Services until such Deliverables and Services are installed by Contractor and accepted by the State or such authorized user. Upon acceptance of a Deliverable or Service, Contractor may, in accordance with the Contract, invoice the State or any authorized user for all Deliverables and Services provided during the acceptance period that conformed to the acceptance criteria.
6. Contractor Testing: Testing by the State or any authorized user pursuant to this Attachment 6 shall not relieve Contractor of any obligation it may have, pursuant to the Contract or an applicable Statement of Work, to conform to any industry standards or otherwise to conduct its own testing of the Deliverables or Services.

ATTACHMENT 7 - GLOSSARY

The following words and phrases, when used in the Contract, shall have the indicated meanings. (Terms capitalized within a particular definition are defined elsewhere within the Contract.)

"ACCEPTANCE TESTS" shall mean those tests performed during the Performance Testing Period which are intended to determine compliance of Equipment and Software with specifications and all other provisions of this Contract and to determine the reliability of the Equipment.

"AFFILIATE" shall mean any entity, employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other or person that, directly or indirectly, controls, is controlled by, or is under common control with Contractor, whether through ownership of more than fifty (50%) of the voting securities, by contract, managing authority or otherwise.

"AGREEMENT" shall have the same meaning as "CALNET II MSA" and "Contract" and the terms shall be used interchangeably.

"APPLICATION PROGRAM" shall mean a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.

"ATTACHMENT" shall mean a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.

"BENCHMARKER" has the meaning given it in Section 77 of the General Provisions.

"BENCHMARKING PROCESS" has the meaning given it in Section 77 of the General Provisions.

"BENCHMARKING STANDARD" has the meaning given it in Section 77 of the General Provisions.

"BUSINESS DAY" shall mean 8:00 a.m. to 5:00 p.m. PST, Monday through Friday, excluding State holidays.

"CALNET I" shall mean the California Integrated Information Network I.

"CALNET II MSA" shall mean CALNET II Master Service Agreement and shall have the same meaning as "Agreement" and "Contract" and the terms shall be used interchangeably.

"CLECs" shall mean Competitive Local Exchange Carriers.

"COMMERCIAL SOFTWARE" shall mean Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or

license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of the Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of the Contract.

"CONFLICT LAWS" has the meaning given it in Section 37(c) of the General Provisions.

"CONTRACT" shall mean the State of California Standard Agreement, the SOW and the Proposal, together with all attachments thereto (including the General Provisions), documents incorporated therein by reference, and all regulatory filings made pursuant thereto. The term "Contract" shall have the same meaning as "Agreement" and "CALNET II MSA" and the terms shall be used interchangeably.

"CONTRACTOR" shall mean the entity identified in the introductory paragraph to the General Provisions and all of its Affiliates providing Deliverables and/or Services under the Contract.

"CONTRACTOR PERSONNEL" shall mean, at a given time during the Term, all employees, agents and representatives of Contractor or of subcontractors of Contractor who are then assigned or performing responsibilities in connection with providing the Services.

"COST TO COVER" shall mean the cost and expenses incurred to procure replacements Deliverables or Services for the Deliverables and/or Services of equivalent capability, function and performance, or corrected Deliverables or Services, from an alternate source (including, costs and expenses associated with the retention of consultants and legal counsel or the State's imputed costs for the same using internal resources).

"CPE" or **"CUSTOMER PREMISE EQUIPMENT"** shall mean customer owned telecommunications Equipment located at a customer location.

"CPI" shall mean the Consumer Price Index.

"CLEC" shall mean Competitive Local Exchange Carriers.

"CPUC" shall mean the California Public Utilities Commission.

"DATA PROCESSING SUBSYSTEM" shall mean a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.

"DATA PROCESSING SYSTEM (SYSTEM)" shall mean the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.

"DELIVERABLES" shall mean Goods, Software, Information Technology, telecommunications technology, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of Services.

"DELIVERY DATES" shall mean the dates specified by the State for the delivery by Contractor of certain Deliverables or Services.

“DEPARTMENT DIRECTOR” shall mean the Director of DGS.

“DGS” shall mean the Department of General Services of the State of California.

“DGS/PD” shall mean the Procurement Division of the Department of General Services of the State of California.

“DGS/TD” shall mean the Telecommunications Division of the Department of General Services of the State of California.

“DISASTER RECOVERY AND SECURITY PLAN” shall have the meaning given it in Section 76 of the General Provisions.

“DISENTANGLEMENT” shall have the meaning given it in Section 75(c) of the General Provisions.

“DISENTANGLEMENT PLAN” or **“TRANSITION-OUT PLAN”** shall mean the plan for transitioning the provision of services, or portion thereof, pursuant to CALNET II as set forth in the Contract to the State’s alternate service provider (e.g., CALNET III), which identifies all material transition tasks and deliverables to be completed by Contractor in connection with the transition to such alternate service provider, and the dates by which each is to be completed by Contractor, all as further described in Section 75(b) of the General Provisions.

“DISENTANGLEMENT COMMENCEMENT DATE” shall have the meaning given it in Section 75(a) of the General Provisions.

“DOCUMENTATION” shall mean nonproprietary manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.

“DVBE” shall mean a Disabled Veterans Business Enterprise.

“EFFECTIVE DATE” shall mean later date on which the Contract has been both executed by Contractor and has been approved and executed by the State in accordance with the terms therein.

“END TO END SERVICE” shall mean the Contractor is responsible for providing Service(s) on a statewide basis, whether provided by Contractor or subcontractors.

“ENHANCEMENTS” shall have the meaning given it in Section 67 of the General Provisions.

“EQUIPMENT” is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).

“EQUIPMENT FAILURES” shall mean a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment’s intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents

the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

"FACILITIES" shall mean outside plant, cable, capacity, and telecommunication sites and/or Systems provided by either the state or Contractor.

"FCC" shall mean the Federal Communications Commission.

"FOUR-DIGIT DATE COMPLIANT" shall have the meaning given it in Section 44 of the General Provisions.

"GENERAL PROVISIONS" shall mean the California Integrated Information Network II General Provisions.

"GOODS" shall mean all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

"HARDWARE" usually refers to computer Equipment and is contrasted with Software. See also Equipment.

"ICB PRICING" or **"INDIVIDUAL CASE BASED PRICING"** shall mean individual case basis pricing using the methodology described in Section 70 of the General Provisions and as such term is further defined by the CPUC.

"ILECS" shall mean Incumbent Local Exchange Carriers.

"INCLUDE" or **"INCLUDING"**, whether or not capitalized, shall not be construed as terms of limitation.

"INFORMATION TECHNOLOGY" shall mean information technology, including, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

"INTELLECTUAL PROPERTY RIGHT" shall have the meaning given it in Section 15(b) of the General Provisions.

"KEY PERSONNEL" shall mean the Contractor Personnel and its subcontractors who are identified, or the holders of the positions that are identified, and such other Personnel that the State may identify as Key Personnel, from time to time, in a written notice or notices delivered to Contractor.

"LEGISLATURE" shall mean the California State Legislature.

"MACHINE" shall mean an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.

"NOTICE OF TERMINATION" shall mean a written notice of termination from the State to Contractor pursuant to the Contract.

"OPERATING SOFTWARE" shall mean those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.

"ORDERING DOCUMENT" has the meaning given it in Section 2(d) of the General Provisions.

"PERFORMANCE TESTING PERIOD" shall mean a period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.

"PROGRAMMING AIDS" shall mean Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

"PROGRAM PRODUCT" shall mean programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.

"PROPOSAL" shall have the meaning given in Section 1 of the General Provisions.

"PROVIDED RESOURCES" shall have the meaning given in Section 15(e) of the General Provisions.

"RFP" shall have the meaning given in Section 1 of the General Provisions.

"SECURITY POLICIES" shall have the meaning given in Section 82 of the General Provisions.

"SERVICE RATE" shall have the meaning given in Section 77 of the General Provisions.

"SERVICES" shall mean, collectively, the services, functions and responsibilities described in the Contract as they may be supplemented, enhanced, modified or replaced during the Term in accordance with the Contract, including any Enhancements approved by the State.

"SOFTWARE" is an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.

"STATE" shall mean DGS/TD, or as DGS/TD may designate, in its sole discretion, any other department, division, or unit of the State of California, any agency or governmental entity of the State of California or any local jurisdiction within the State of California empowered to expend public funds, and their end-users, intended to receive the benefit of the Services. DGS/TD may exercise such discretion at any time and from time to time, either on a case-by-case basis or by notifying Contractor of its then-established policies and guidelines for the same. Without limiting any of the foregoing, the Parties presently anticipate that: (a) where the term is used in reference to contract administration activities, it shall refer to DGS/TD and (b) where the term is used in reference to payment obligations and dispute resolution activities, as the same relate to

a particular Ordering Document, it shall refer to the entity identified in such Ordering Document or by DGS/TD as the beneficiary of the Deliverables and Services.

"STATE RESOURCES" shall have the meaning given in Section 15(e) of the General Provisions.

"STATEMENT OF WORK" is Attachment 2 and any additional statements of work entered into by the State and Contractor pursuant to this Contract.

"STOP WORK ORDER" shall mean a written order from the State to the Contractor instructing the Contractor to stop the performance of all, or some portion, of work under the Contract, as further described in Section 36(b) of the General Provisions.

"SUBCONTRACT PRICING REVIEW" shall have the meaning given in Section 77 of the General Provisions.

"SUBCONTRACT RATE" shall have the meaning given in Section 77 of the General Provisions.

"SYSTEM" shall mean the complete collection of Hardware, Software and Services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

"TECHNICAL CONSULTING AND DIRECTION" shall have the meaning given it in Section 37(b) of the General Provisions.

"TERM" shall have the meaning given it in Section 78 of the General Provisions.

"THIRD PARTY OBLIGATION" shall have the meaning given it in Section 32 of the General Provisions.

"TRANSITION-IN PLAN" shall mean the plan for transitioning the provision of services pursuant to CALNET I to the provision of Services pursuant to CALNET II pursuant to the Contract, which identifies all material transition tasks and Deliverables to be completed by Contractor in connection with the transition of all Services to Contractor, and the dates by which each is to be completed by Contractor, all as further described in Section 74 of the General Provisions.

"USAC" shall mean Universal Service Administrative Company.

"WORK AUTHORIZATION" shall mean a work authorization executed by the State and Contractor for unanticipated work not specified in the Statement of Work, as further described in Section 54 of the General Provisions and which will be prepared in accordance with the sample provided in Attachment 5, Exhibit A-4.

ATTACHMENT 8**SUBCONTRACTORS/BUSINESS PARTNERS AUTHORIZED TO BILL CALNET CUSTOMERS
FOR SERVICES PROVIDED**

Listed below are the Subcontractors and Business Partners that are authorized to submit invoices and receive payment for services provided under the authority of the CALNET II Contract.

Business NameAddress

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____